

*United States Court of Appeals
for the Second Circuit*



APPENDIX

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74-1547

United States Court of Appeals
For the Second Circuit.

ANNELOU TEIXEIRA, individually and on behalf of all other
persons similarly situated,

Plaintiff-Appellant,

against

MORAL RE-ARMAMENT, INC., and UP WITH PEOPLE,
INCORPORATED,

Defendants-Appellees.

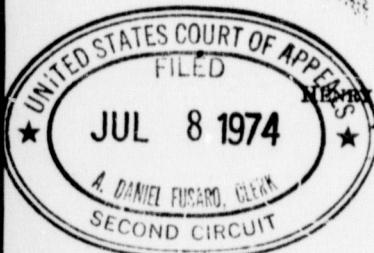
ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOINT APPENDIX.

PARKER, DURYEE, ZUNINO, MALONE & CARTER,
Attorneys for Plaintiff-Appellant,
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ROBERT L. TUTTLE,
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New York, N. Y. 10038
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HENRY L. BAYLES,
Attorney for Defendant-Appellee,
Up With People, Incorporated,
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New York, N. Y. 10036
WO 2-0485.



PAGINATION AS IN ORIGINAL COPY

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United States District Court**SOUTHERN DISTRICT OF NEW YORK.**

ANNELOU TEIXEIRA, individually and on behalf of all
persons similarly situated,

Plaintiff,

against

MORAL RE-ARMAMENT, Inc., UP WITH PEOPLE INCORPORATED
and KIDDER, PEABODY AND COMPANY,

Defendants.

Docket Entries.

Date	Proceedings
1973	
Jan. 2	Filed Complaint. Issued Summons.
Jan. 26	Filed Stip and Order that the time for deft Moral Re-Armament, Inc. to answer is ex- tended from 1-29-73 to 2-28-73. Bauman, J.
Jan. 30	Filed Stip and Order that time for Deft Up With People Inc. to answer is extended to 2/28/73. Bauman, J.
Feb. 2	Filed Summons with Marshal's Returns. Served Moral Re-Armament, Inc. by George A. Von- dermuhi Jr. Secy. Served Kidder, Peabody and Co. by Robert Krantz, Jr. Legal Counsel on 1/31/73 Served Up With People Incorp.

Docket Entries

Feb. 15 Filed Stip and Order that the time for deft Up With People Inc. to appear is extended to 3-28-73. Bauman, J.

Feb. 23 Filed Stip & Order that time for Deft. Kidder, Peabody & Co, Inc. to answer is extended from 2/20/73 to 3/13/73. Bauman, J.

Feb. 23 Filed Deft. Moral Re-Arment, Inc. Stip & Order re: Complaint, is extended from 2/28/73 to 3/28/73. Bauman, J.

Mar. 21 Filed Deft Kidder, Peabody & Co. Incorp Answer to Complaint. W&F

Mar. 20 Filed Deft. Kidder, Peabody & Co. Inc. Stip & Order extending time to answer Complaint from 3/13/73 to 3/21/73. Bauman, J.

Mar. 26 Filed Pitffs notice of motion, Re: Class action, ret before Bauman J.

Mar. 22 Filex stip & order that the time for the deft. Up-with The People to answer the complaint is extended to 4/11/73. So Ordered Bauman J.

Mar. 27 Filed stip & order that the time for the deft. Moral Re-Armamnet, Inc to answer the complaint is extended to 4/11/73, So Ordered Bauman J.

Apr. 11 Filed stip and Order that the time for the deft. Moral Re-Armament Inc. to answer the complaint is extended to 4/18/73, So Ordered Bauman J.

Apr. 26 Filed deft MRA's notice of motion, Re: Summary Judgment, ret before Bauman J. on 4/30/73

Docket Entries

Apr. 26 Filed stip and order that the motions of defts Moral Re-Armament, Inc. & Up with People Inc. for summary Judgment is adjourned to 5/30/73, So Ordered Bauman J.

May 30 Filed stip and order, pltffs motion is adjourned until 6/22/73, So Ordered Bauman J.

June 6 Filed Pltffs affidavit in opposition to motion for summary judgment.

June 6 Filed Pltffs statement of facts pursuant to rule 9(g)

June 6 Filed pltff's memo of law,

June 6 Filed pltffs affidavit of service by Winston Alleyne.

June 21 Filed stip and order that deft. Moral Re-Armament's motion for summary judgment is hereby adjourned until 7/27/73, So Ordered Bauman J.

1974

Feb. 25 Filed deft. memo of law.

Feb. 25 Filed deft. notice of motion to dismiss.

Feb. 25 Filed pltfs. reply affdvt.

Feb. 25 Filed deft. MRA's statement pursuant to Rule 9(g)

Feb. 25 Filed deft. MRA's reply affdvt.

Feb. 25 Filed deft. MRA's opposing affdvt. to pltf. motion.

Feb. 25 Filed deft. MRA's supplemental affdvt.

Feb. 25 Filed deft. MRA's brief.

Feb. 25 Filed deft. Up With People opposing affdvt. to pltf. class action motion.

Docket Entries

Feb. 25 Filed deft. MRA's notice of motion to strike
pltfs. jury demand.

Feb. 25 Filed Opinion # 40391 : ***
Pltfs. action is not maintainable as a class ac-
tion. MRA's motion for summary judgment
is denied. UWP's motion for summary judg-
ment is granted. Demand for jury trial de-
nied. So Ordered. Bauman, J. (n/m)

Feb. 26 Filed Judgment that deft. Up with People Inc.
have summary judgment against pltff. dis-
missing complaint as to said deft. only—
Judgment entered—Clerk—m.n.

Mar. 6 Filed deft's (Moral Re-Armament) motion for
reargument. Ret. 4-15-74.

Mar. 8 Filed pltffs notice of motion for reargument.
Ret. 4-15-74.

Mar. 21 Filed plaintiff's notice of appeal from the order
of Judge Bauman entered in this action Fe-
bruary 25-74.

Complaint: Class Action.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

ANNELOU TEIXERIA, individually and on behalf of all other persons similarly situated,

Plaintiff,

against

MORAL RE-ARMAMENT, Inc., UP WITH PEOPLE INCORPORATED and KIDDER, PEABODY AND COMPANY,

Defendants.

73 Civ. 5

Plaintiff, by her attorneys, Parker, Duryee, Zunino, Malone & Carter, complaining of Defendants, respectfully alleges:

JURISDICTIONAL ALLEGATIONS

1. The jurisdiction of this Court is invoked under the provisions of Article III, §2 of the United States Constitution and Title 28, United States Code §1332. The amount in controversy in the case at bar exceeds \$10,000, exclusive of interest and costs.

2. Plaintiff is a citizen of the Kingdom of the Netherlands.

3. Upon information and belief, Moral Re-Armament, Inc. (hereinafter "MRA") is a non-profit corporation organized and existing under and pursuant to the laws of

Complaint: Class Action

the State of New York and maintains its principal office for the transaction of business at 124 East 40th Street, City, County and State of New York.

4. Upon information and belief, Up With People Incorporated (hereinafter "UWP") is a corporation organized and existing under and pursuant to the laws of the State of California and maintains its principal office for the transaction of its business affairs at 1735 East Fort Lowell Road, Tucson, Arizona.

5. Upon information and belief, Kidder, Peabody and Company (hereinafter "Kidder") is a corporation organized and existing under and pursuant to the laws of the State of New York and maintains its principal office for the transaction of its business affairs at 20 Exchange Place, City, County and State of New York.

CLASS ACTION ALLEGATIONS

6. This is a class action brought under the provisions of Rule 23(a)(b) 1 and 3 of the Federal Rules of Civil Procedure.

7. Plaintiff, as a representative member of the class, brings this action on behalf of all members for the following reasons: that the class is so numerous that joinder of all members is impracticable; that there are questions of law and fact common to the class; that the claims of Plaintiff, as a representative member of the class, are typical of the claims of all members of the class; and that Plaintiff will fairly and adequately represent and protect the interest of the class.

8. Plaintiff is a member of a class all of whom have contributed funds to the Life Income Fund of MRA (hereinafter "Fund") upon the representations that said contributions would be used to advance the purposes and goals of MRA.

Complaint: Class Action

9. Plaintiff, as the representative member of said class, will fairly and adequately represent and protect the interest of the class by reason of the following facts: Plaintiff and her attorneys have heretofore investigated the activities and affairs of the Defendants and, as a result of said investigations, are fully familiar with the factual and legal controversies herein. Plaintiff and her attorneys are fully familiar with the facts of this case whereby each member of the class was solicited for and did enter into the certain Life Income Agreements with MRA relying upon the representation that the money would be used for the purposes expressed in the Certificate of Incorporation of MRA. Beginning in or about 1968 said monies were not used to promote such goals and purposes. In addition, all questions of law and many questions of fact are common to the class.

10. The questions of law that are common to the class relate to the inducement of all members of the class by MRA to enter into the aforesaid Life Income Agreements and the subsequent illegal and improper use of the monies of the Fund to support UWP. There are violations of the common law of fiduciary duty, deceit, conversion and fraud in the inducement. The questions of fact that are common to the class relate to the representations made by the Defendants to the members of the class seeking to induce them and causing them to be induced to enter into said Life Income Agreements. The monies so contributed were thereafter used for improper and illegal purposes by the Defendants in the manner hereinafter alleged.

11. The questions of law and fact common to the members of the class predominate over any questions affecting individual members thereof, and a class action is superior to other available methods for the fair and

Complaint: Class Action

efficient adjudication of this controversy. Thus, there will be only one action maintained on behalf of all members of the class, with a consequent saving of time, expense and judicial manpower. Upon information and belief, no action has been commenced concerning the controversy alleged herein by any member of the class.

12. Defendants severally and individually have and will continue to misuse the monies contributed to the Fund causing and inflicting irreparable harm to the members of the class unless Defendants are permanently enjoined from transferring monies from MRA to UWP.

FIRST CLAIM

13. The Certificate of Incorporation of MRA states in pertinent part:

"2. The purpose or purposes for which it [MRA] is to be formed are as follows:

(a) The advancement of the Christian religion and in particular by the means and in accordance with the principles of the Oxford Group and First Century Christian Fellowship founded by Frank Nathan Daniel Buchman, and its program of Moral Re-Armament.

(b) To disseminate Christian teachings . . .".

14. On or about June 21, 1965 and August 5, 1965, the Plaintiff entered into two Life Income Agreements pursuant to which she transferred a total of \$50,000.00 to the Fund. Plaintiff was to receive the income derived from the investment and reinvestment of said sum during her lifetime and the principal of said sum will vest absolutely in MRA upon the death of Plaintiff. (A copy of the Life Income Agreements are annexed hereto, made a part hereof and labelled Exhibits "A" & "B").

Complaint: Class Action

15. Prior to the execution by Plaintiff and the members of the class of said Life Income Agreements, MRA represented to them that the monies would be used and applied by MRA toward its goals and purposes, as reflected in its Certificate of Incorporation, to wit: the advancement of the Christian religion and in particular by the means and in accordance with the principles of the Oxford Group and First Century Christian Fellowship founded by Frank Nathan Daniel Buchman and its program of Moral Re-Armament through the dissemination of Christian teachings.

16. The Plaintiff and the other members of the class relied upon the above stated representations in executing their respective Life Income Agreements.

17. The Plaintiff and the other members of the class have a continuing interest in seeing that sums transferred pursuant to the various Life Income Agreements will be used for the purposes and goals of MRA, as set forth in its Certificate of Incorporation, since the transferred monies will vest absolutely in MRA upon the death of Plaintiff and the other members of the class.

18. Upon information and belief, UWP has no connection with and does not promote the advancement of the Christian religion, the principles of the Oxford Group and First Century Christian Fellowship or the dissemination of Christian Teaching.

19. Upon information and belief, UWP is primarily engaged in the production and promotion of activities known by and as Up With People Concerts.

20. Upon information and belief, there is no connection whatsoever between the corporate purposes and goals of MRA and UWP.

Complaint: Class Action

21. Upon information and belief, in direct violation of the purposes set forth in its Certificate of Incorporation MRA contributed the following sums to Defendant UWP.

1968	\$ 178,841.00
1969	923,892.00
1970	1,753,497.00
1971	an unknown amount

22. Upon information and belief, MRA is still contributing and, without the intervention of this Court, will continue to contribute large and substantial sums to UWP from the sums contributed to the Fund upon their vesting in MRA.

23. Upon information and belief, the monies of said Fund, vested in MRA are being principally used for the support of UWP and are not being used to further the purposes of MRA as set forth in its Certificate of Incorporation.

24. Upon information and belief, the monies contributed to the Fund by Plaintiff and the members of the class will be used by MRA, upon vesting, for the support of UWP.

25. The conduct of MRA, as hereinabove alleged, is in violation of the aforesaid purposes set forth in its Certificate of Incorporation and is directly contrary to the representations made to Plaintiff and the members of the class prior to the execution of the aforementioned Life Income Agreements.

26. Plaintiff and, upon information and belief, the members of the class would not have entered into the aforesaid Life Income Agreements had they known that the representations made by MRA were to become false

Complaint: Class Action

and fraudulent and that MRA intended to become the principal source of support for UWP.

27. By virtue of the conduct of MRA and UWP, as hereinabove alleged, Plaintiff and the members of the class are in imminent danger of irreparable harm.

28. Plaintiff and the members of the class do not have an adequate remedy at law.

WHEREFORE, Plaintiff demands judgment in her behalf and in behalf of the members of the class permanently enjoining and restraining MRA and Kidder, their respective officers, directors, employees, agents, attorneys or any one else acting in their behalves; from transferring, paying out or disbursing any monies heretofore contributed by Plaintiff and the members of the class to the Fund, except in furtherance of the purposes and goals of MRA, as set forth in its Certificate of Incorporation; permanently enjoining UWP, its officers, directors, employees, agents, attorneys or any one acting in its behalf from accepting from MRA any monies heretofore contributed by Plaintiff and the members of the class to the Fund; granting to Plaintiff and the members of the class the costs and disbursements to this action and reasonable attorneys fees; and granting to Plaintiff and the members of the class such other and further relief as to this Court may seem just and proper.

PARKER, DURYEE, ZUNINO, MALONE
& CARTER

By Thomas F. Tivnan
A Member of the Firm
Attorneys for Plaintiff
Office & P. O. Address
1 East 44th Street
New York, New York 10017

Notice of Motion for Class Action.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

To:

Henry L. Bayless, Esq.
55 Liberty Street
New York, New York
Attorney for Up With People Incorporated

Washburn & Gray
36 W. 44th Street
New York, New York
Attorneys for Moral Re-Aramament, Inc.

Walsh & Frisch
250 Park Avenue
New York, New York
Attorneys for Kidder, Peabody and Company

Please Take Notice that on the complaint herein and the annexed affidavit of Thomas F. Tivnan, sworn to March 8, 1973, Plaintiff will move this Court on the 9th day of April 1973 at 10:00 in the forenoon of that day or as soon thereafter as counsel can be heard pursuant to F. R. Civ. Proc 23(c) and Rule 11A(c) of the Civil Rules of this Court for an order determining whether this action is to be maintained as a class action, and, if so, the membership of the class all in accord with the provisions of the aforementioned rules, and

Notice of Motion for Class Action

granting unto Plaintiff such other and further relief as to this Court may seem just and proper.

PARKER, DURYEE, ZUNINO, MALONE
& CARTER

By Thomas F. Tivnan
Member of the Firm
Attorneys for Plaintiff
1 East 44th Street
New York, New York 10017
Telephone: 697-0430

**Affidavit of Thomas F. Tivnan in Support of Motion for
Class Action.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

State of New York,
County of New York, ss:

THOMAS F. TIVNAN, being duly sworn, deposes and says:

1. I am a member of the law firm of Parker, Duryee, Zunino, Malone & Carter, attorneys for Plaintiff in the above-captioned matter, and I am fully familiar with all of the prior proceedings heretofore had herein. I submit this affidavit in support of the motion of plaintiff, pursuant to F. R. Civ. Proc. 23(e) and Rule 11A(e) of the Civil Rules of this Court for an order determining whether this action is to be regarded as a class action and, if so, the membership of this class. Annexed hereto and labeled Exhibit "A" is a copy of the complaint herein.

2. It should be noted that all the Defendants have retained attorneys who have been granted substantial extensions of time in which to move or answer with regard to the complaint herein. I, therefore, respectfully defer to the Court's discretion as to whether or not the instant motion should be held in abeyance until Defendants interpose an answer to the complaint.

3. This suit was instituted in January of 1973 by Plaintiff in order to enjoin Defendants Moral Re-Armanent, Inc. (MRA) and Kidder, Peabody and Company

*Affidavit of Thomas F. Tirnan in Support of Motion for
Class Action*

(Kidder) from transferring funds to Defendant Up With People (UWP) from monies that had been contributed to MRA by Plaintiff and other persons similarly situated. The action was brought pursuant to Federal Rule of Civil Procedure 23(a)(b)1 and 3.

4. Plaintiff alleges in general that:

- a. The class is so numerous that joinder of all members is impracticable;
- b. There are questions of law and fact common to the class;
- c. The claims of plaintiff as a representative member of the class are typical of the claims of all members of the class; and
- d. Plaintiff through her attorneys will fairly and adequately represent and protect the interest of the class.

5. The class to which Plaintiff belongs is a group of people who have contributed funds to the life income of MRA. The money was given because a representation was made that the contributions would be used to advance the purposes and goals of MRA.

6. Plaintiff and her attorneys have heretofore investigated the activities and affairs of all of the Defendants as they relate to this lawsuit and, as a result of those investigations, are fully familiar with the factual and legal controversies herein. Plaintiff and her attorneys are fully familiar with the facts of this case whereby every member of the class was solicited for and entered into a Life Income Agreement with MRA relying upon the representation that the money would be used for purposes more specifically expressed in the Certificate of Incorporation of MRA. Beginning sometime in 1968,

*Affidavit of Thomas F. Tirnan in Support of Motion for
Class Action*

said monies were not used to promote such goals and purposes. Thus, Plaintiff, as the representative member of such class, will adequately represent and protect the interest of the class in question.

7. Questions of law that are common to the class relate to the inducement of all members of the class by MRA to enter into the aforesaid Life Income Agreement and the subsequent illegal and improper use of the monies in the fund to support UWP.

8. The questions of fact that are common to the class relate to the representations made by MRA to the members of the class seeking to induce them and causing them to be induced to enter into said Life Income Agreement. It is alleged that the monies so contributed were thereafter used for improper and illegal purposes and not for the purposes for which the monies were given.

9. The questions of law and fact common to the members of the class predominate over any questions affecting individual members thereof, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy. Thus, there will be only one action maintained on behalf of all members of the class, with a consequent saving of time, expense and judicial manpower. Upon information and belief, no action has been commenced concerning the controversy alleged herein by any member of the class.

10. Defendants MRA and UWP severally and individually have and will continue to misuse the monies contributed to the Fund causing and inflicting irreparable harm to the members of the class unless Defendants are

*Affidavit of Thomas F. Tivnan in Support of Motion for
Class Action*

permanently enjoined from transferring monies from MRA and UWP.

11. As can be seen from a reading of the above paragraphs of this affidavit, much of what was said in the complaint has been repeated for the purposes of the instant motion. The allegations contained in the complaint and this affidavit clearly indicate that this motion should be designated a proper suit for a class action. It is respectfully submitted that this Court should determine that this action should be maintained pursuant to the provisions of F. R. Civ. Proc. 23 and Rule 11(A) of the Civil Rules of this Court.

WHEREFORE, it is respectfully requested that this motion be granted in all respects and that the proceeding be determined as one in which a class action status is appropriate and for such other and further relief as to this Court may seem just and proper.

(Sworn to by Thomas F. Tivnan on March 19, 1973.)

**Affidavit of Henry L. Bayles in Opposition to Motion
for Class Action.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

State of New York,
County of New York, ss:

HENRY L. BAYLES, being duly sworn, deposes and says that he is attorney for defendant, Up With People, Inc. and is familiar with the facts and proceedings herein.

Plaintiff has made a motion returnable April 9, 1973 for an order determining that this action is a proper class action and the description of the class involved.

In opposition to this motion, deponent respectfully refers the Court to the motion for summary judgment being made by defendant, Up With People, Inc. to dismiss the complaint against it and for other relief, which motion is being timely made and served on or before April 11, 1973.

(Sworn to by Henry L. Bayles on April 6, 1973.)

Notice of Motion of Defendant Up With People, Incorporated, for Summary Judgment, Dismissing Complaint, etc.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

SIRS:

Please Take Notice that upon the annexed affidavit of Donald P. Birdsall, Executive Vice-President of defendant, Up With People, Incorporated, sworn to April 3, 1973, and the annexed affidavit of Henry L. Bayles, sworn to April 6th, 1973, and the exhibits referred to said affidavits and the summons and complaint and upon the papers on file in the Office of the Clerk of the County of New York in an action instituted in the Supreme Court, State of New York, County of New York entitled "*In the Matter of the Application of Moral Re-Armament, Inc., petitioner against The Oxford Group—Moral Re-Armament and other respondents*" (County Clerk's Index No. 4472—1971) which will be requisitioned for use upon this motion and upon all proceedings heretofore had herein, the undersigned will move this Court at a term of the hearing of motions, to be held at the Courthouse, Foley Square, New York, New York, before Hon. Arnold Bauman, on the 30th day of April 1973 at 9:30 A.M. on that day:

For An Order pursuant to Rule 56 and Rule 12 (b) (6) of the Rules of Civil Practice, granting summary judgment dismissing the complaint against the defendant, Up With People, Inc., or if that relief not be granted, for an order determining that this is not a proper class action and for such other and further re-

Notice of Motion of Defendant Up With People, Incorporated, for Summary Judgment, Dismissing Complaint

lief as to the Court may seem just and proper in the premises.

Please Take Further Notice that any opposing papers should be served upon the undersigned at least five (5) days before the return date.

New York, New York
April 9th, 1973.

Yours, etc.,

HENRY L. BAYLES
Attorney for Defendant
Up With People, Inc.
Office & P. O. Address:
55 Liberty Street
New York, New York 10005
(212) WO 4-0285

To:

Parker, Duryee, Zunino, Malone & Carter, Esqs.
Attorneys for plaintiff
1 East 44th Street
New York, New York 10017

Washburn & Gray, Esqs.
Attorneys for defendant, Moral Re-Armament, Inc.
36 West 44th Street
New York, N. Y.

Walsh & Frisch, Esqs.
Attorneys for defendant, Kidder, Peabody &
Company
250 Park Avenue
New York City, New York

Attorney General of The State of New York
80 Centre Street
New York City, New York

**Affidavit of Donald P. Birdsall in Support of Motion
for Summary Judgment, etc.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

State of New York,
County of New York, ss:

DONALD P. BIRDSALL, being duly sworn deposes and says as follows:

I am Executive Vice-President and a Director of defendant, Up With People, Inc. (hereafter UWP) a non-profit educational and charitable corporation with its principal corporate offices in Tucson, Arizona.

I respectfully submit this affidavit and exhibits and the annexed affidavit of Henry L. Bayles, Esq., attorney for UWP, in support of the motion of UWP for an order and judgment dismissing the complaint against it.

I have been advised by our attorney that plaintiff's claim is not improved by its inclusion in this class action and that if plaintiff herself has no valid and meritorious cause of action against UWP or is barred from maintaining such action, the complaint in this action should be dismissed at the threshold of the litigation.

Nature of this Action

This action was instituted on January 9, 1973 by the service in Tucson, Arizona upon UWP of a copy of the summons dated January 2, 1973 and complaint certified by Thomas F. Tivnan, Esq., as a member of the firm

*Affidavit of Donald P. Birdsall in Support of Motion for
Summary Judgment, etc.*

of plaintiff's attorneys, Messrs. Parker, Duryee, Zunino, Malone & Carter of New York City.

The complaint alleges that it is a class action instituted by plaintiff as a contributor to Moral Re-Armament Inc. (hereafter MRA) under its "Moral Re-Armament Investment Fund" (hereafter called the Fund) under "Life Income Agreements" dated June 21, 1965 (Exhibit A) and August 4, 1965 (Exhibit B). The complaint alleges that plaintiff is a citizen of the Netherlands, the amount in controversy exceeds the jurisdictional requirement and that she brings this action as a class action on behalf of herself and all other similar contributors to the Fund.

Under the Life Income Agreements (Exhibits A & B) the defendant, Kidder, Peabody & Co. was designated as the custodian of the securities acquired with plaintiff's contributions. Plaintiff alleges that the income from the sums so contributed under the agreements would be paid to her during her lifetime and would only vest in MRA upon her death. (¶14)

The complaint alleges that plaintiff and other similar contributors to MRA entered into the Life Income Agreements "relying upon the representation that the money would be used for the purposes expressed in the Certificate of Incorporation of MRA". (¶9)

The complaint purports to quote (¶13) what it states are the relevant provisions of the Certificate of Incorporation of MRA covering its purposes and powers and then alleges, upon information and belief, that "there is no connection whatsoever between the corporate purposes and goals of MRA and UWP." (¶20)

The complaint states that beginning "in or about 1968" (¶3) and during the period 1968-1971 MRA contributed in "direct violation of the purposes set forth in its Cer-

*Affidavit of Donald P. Birdsall in Support of Motion for
Summary Judgment, etc.*

ertificate of Incorporation" (¶21) substantial sums to UWP and that MRA is still contributing "large and substantial sums to UWP from the sums contributed to the Fund upon their vesting in MRA", (¶22); that those sums in the Fund vested in MRA "are being principally used for the support of UWP and are not being used to further the purposes of MRA, as set forth in its Certificate of Incorporation", (¶23) and that upon information and belief the "moneys contributed to the Fund by Plaintiff and the members of the class will be used by MRA, upon vesting, for the support of UWP." (¶24)

The complaint goes on to allege that as a result plaintiff and the members of the class "are in immediate danger of irreparable harm" and plaintiff and the other members of the class have no adequate remedy at law. (¶28)

Relief Requested (p. 8):

The complaint seeks a judgment:

(a) restraining defendants, MRA and Kidder, Peabody & Company from transferring hereafter any of the sums which have been contributed by plaintiff and the other members of the class to the Fund, "except in furtherance of the purposes of MRA as set forth in its Certificate of Incorporation";

(b) restraining defendant UWP from accepting from MRA any moneys contributed to the Fund by plaintiff or the other members of the class;

(c) granting attorney's fees to plaintiff and other relief.

In this affidavit the following will be shown:

*Affidavit of Donald P. Birdsall in Support of Motion for
Summary Judgment, etc.*

(1) Whatever contributions were made by MRA a non-profit tax exempt membership organization to UWP another nonprofit tax exempt membership organization in 1968 when UWP was organized and thereafter were properly made; and MRA and its directors had clear discretion and power to make such contributions.

(2) The work of UWP in the "Sing Out" and "Up With People" programs was the direct outgrowth of similar work performed by MRA as part of its own functions from about 1965 until 1968, prior to the organization of UWP; and because of the great success of this activity, MRA sponsored and had UWP organized in 1968 as a separate nonprofit tax exempt membership organization to carry on independently that phase of MRA'S work. It is respectfully submitted that it had a clear right to do so.

(3) While MRA was itself performing the "Sing Out" and "Up With People" programs from 1965—1968, plaintiff before and after she made the contributions to MRA in 1965 reflected in the Life Income Agreements (Exhibits A and B, complaint) was notified by MRA of its activities in this connection and she in writing approved of them.

(4) Further if plaintiff had any valid complaint with respect to these activities first by MRA and then by UWP, plaintiff has not shown any valid excuse for waiting eight years before she instituted this action.

(5) Further it is my belief as shown by a recitation of the facts of prior litigation in our attorney's supporting affidavit, that this class action is not being instituted in good faith.

*Affidavit of Donald P. Birdsall in Support of Motion for
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(6) In further support of the motion of UWP to dismiss the complaint, the affidavit of our attorney will raise other objections to the maintenance of this class action.

FACTS

I have knowledge of the facts of this action since Mr. J. Blanton Belk, President of UWP, and I participated in the organization of UWP in the year 1968 and ever since then we have been active officers and closely identified with all of its activities.

Further, prior to the organization of UWP in 1968, I was Treasurer and a Director of the defendant, MRA, also a nonprofit corporation, organized in the year 1941 for educational, charitable and religious purposes and Mr. Belk was its Executive Director. For a number of years prior to 1968, I and Mr. Belk were actively connected as officers and directors with MRA and I was personally acquainted with Dr. Frank N. D. Buchman, one of the original corporate organizers of MRA in New York.

As Treasurer of MRA, I signed the Life Income Agreements on behalf of MRA dated June 21, 1965, and August 4, 1965, with one "Annie Louise Teixeira De Mattos", copies of which agreements are annexed to the complaint as Exhibits A and B. The complaint alleges (¶14) that the "Annelou Teixeira" named as the plaintiff, is the same person who signed these Agreements, and for the purposes of this affidavit I will assume they are.

While I was associated with MRA, I personally met the plaintiff and my staff arranged for the transfer of her contributions, aggregating some \$50,000, to MRA un-

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der the terms and conditions set forth in said agreements dated June 21, 1965 and August 4, 1965.

Since I am fully acquainted with the functions, powers and activities of both UWP and MRA as well as the facts of this action, I respectfully submit this affidavit and annexed exhibits in support of the motion by defendant UWP to dismiss the complaint against it and for such other relief as may be equitable in the premises.

Functions of Moral Re-Armament Inc.

MRA was incorporated in the year 1941 under the Membership Corporation Law of New York as a nonprofit organization. A copy of its Certificate of Incorporation filed March 7, 1941 is annexed hereto as Exhibit A. Its original name was "The Oxford Group--Moral Re-Armament, MRA, Inc." It applied for and was granted tax exempt status by the Federal Government. (See Publication #78, Cumulative List of Tax Exempt Organizations issued regularly by Internal Revenue Service) Its name was subsequently shortened in 1964 to its present name of Moral Re-Armament, Inc. (see Certificate of Change of Name annexed hereto as Exhibit B.)

The principal organizer of MRA was Dr. Frank N. D. Buchman who for many years until his death sought to have all people follow the universal virtues of absolute morality, truthfulness, tolerance and good will of one man toward another—which are the cornerstones of Christian teachings as well as the teachings of Judaism and other major religions. Dr. Buchman believed that people—irrespective of race, creed or national origin—are the most important works of God on earth and he particularly stressed his interest in the broad and liberal

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education of youth, in order to install in them these virtues.

Under its Charter, MRA and its directors have broad powers to engage in religious as well as educational or charitable functions and it is not a narrow religious organization or church.

In ¶2A of its Charter, MRA is authorized to advance the Christian religion by the means advocated by Dr Buchman whose aim was recited to be "personal, social, racial, national and supernational salvation". This latter phrase was apparently inadvertently omitted in the complaint when it quoted these provisions. (¶13)

Then as a separate and independent function, ¶2B of its Charter empowers MRA to disseminate Christian *teachings* (i.e. brotherhood, tolerance, morality, irrespective of race, creed or national origin):

"* * * by means of the preparation, publication and circulation of magazines, pamphlets, books, songs, music and other writings, or by means of radio or television broadcasts, or the use of sound or motion picture films".

Then ¶2C went on to authorize MRA:

"To engage in one or more activities of a religious, charitable *or* educational nature which may be necessary *or* proper to carry out said purposes and objects." (italics added)

The Charter goes on under ¶2D(1) to empower MRA to receive donations, contributions and bequests and adds in ¶2D(2) that it has authority:

"To establish and support, or aid in the establishment and support, of any religious, charitable

Affidavit of Donald P. Birdsall in Support of Motion for Summary Judgment, etc.

or educational associations or institutions, and to contribute money for religious, charitable or educational purposes in any way connected with the purposes of the corporation or calculated to further its purpose". (italics added)

Finally, the Charter (¶2D[3]) authorizes MRA:

"To do all such other things as are incidental or conducive to the attainment of the above objects or any of them". (italics added)

Under the wide powers vested in it, MRA ever since its organization carried on a variety of functions whose aim was to promote better understanding and good will among all people and the education of youth.

NRA sponsored musical performances, conferences, educational programs for the youth, high school and college programs, published magazines, films, books and records, met with union leaders and management heads to avert strikes and attempted reconciliation of differences among diverse racial groups.

From the year 1965 on—and not simply from 1968 as alleged in the complaint (¶9)—MRA supported its Sing Out and Up With People programs. It gives me great personal satisfaction and pride that Mr. Belk and I while associated with MRA were instrumental in initiating this program. The scope of this program can best be ascertained by reference to the Annual Reports issued by MRA for the years 1965, 1966 and 1967, copies of which will be submitted to the Court, and to which the Court's attention is respectfully invited. Copies will also be delivered to plaintiff's attorneys.

During this period and in the year 1965 plaintiff made contributions aggregating about \$50,000 to MRA under

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the Life Income Agreements (Complaint, Exhibits A and B). At that time plaintiff was a Dutch national, unmarried, 54 years of age and reputed to be financially independent. She did not make her contributions to MRA hurriedly since she first expressed a wish to do so in October 1964. Before making the contributions, she went thoroughly into the tax consequences and consulted with her advisors abroad. I have known plaintiff personally for some years and know her to be an intelligent person.

I signed the Life Income Agreements on behalf of MRA while plaintiff signed the agreements under the guidance of her financial advisors in Amsterdam, Schill & Capadose, who witnessed plaintiff's signature on both agreements.

There was a separate MRA organization in Holland but plaintiff chose to make her contributions to the New York MRA.

The conditions under which MRA received the contributions from plaintiff were expressed in the agreements themselves. When plaintiff's contributions were received by MRA, they were turned over for investment to Kidder, Peabody & Co. who acts as custodian of the funds. The principal of plaintiff's contributions will not vest absolutely in MRA until her death.

Under the agreements, plaintiff reserved the right to receive for life her share of the income. While I was connected with MRA, plaintiff duly received whatever income to which she was entitled and I have been advised that thereafter and up to date she continued to receive her share of the income from MRA. For example in her letter dated January 31, 1972 (copy annexed hereto as Exhibit C), she acknowledges receipt of the quarterly payment then due.

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Prior thereto, in a letter dated November 9, 1970 (copy annexed hereto as Exhibit D) Harry B. Clark, Esq. of New York City, acting for plaintiff, wrote to MRA with respect to plaintiff's Life Income Agreements and requested a statement of the total amount of income she earned. That letter stated:

"We have been retained by Annie Louise Teixeira De Mattos, of The Hague, Holland, in connection with the Life Income Agreement entered into between her and yourselves on June 21, 1965. We understand that at that time she transferred approximately \$50,000 to you to be held under the conditions outlined in the Agreement * * *

The attorneys for MRA responded by letter to Mr. Clark dated November 25, 1970 (copy annexed hereto as Exhibit E) enclosing a schedule of the income. I have been advised that no further request for information was made by Mr. Clark or anyone else.

While I was connected with MRA and I believe in every way thereafter, MRA faithfully and fully complied with its agreements and undertakings with plaintiff.

With respect to her claim alleged in this action that the support of MRA of UWP is not in accordance with its Charter, it may be noted that while I was associated with MRA, it made it a practice to send its annual reports to plaintiff, as well as to other contributors. MRA'S annual reports for the years 1965, 1966, 1967 and 1968, (copies of which are being submitted to the Court and delivered to plaintiff's attorneys) fully described its Sing-Out and Up With People activities. What is significant is that plaintiff at the time indicated that she approved of these activities.

Affidavit of Donald P. Birdsall in Support of Motion for Summary Judgment, etc.

So in her letter to MRA'S representative dated August 20, 1965 (copy annexed hereto as Exhibit F) plaintiff after acknowledging receipt of copy of the Life Income Agreement, noted:

"I was very glad to read the fascinating news coming in from 'Sing-Out '65'. It is most heartening."

Then in a letter of January 19th, 1966 addressed to me, (copy annexed as Exhibit G) plaintiff wrote (first page):

"The news of 'Sing-Out '66' and the second east for the Northwest is most inspiring."

In her letter to me dated June 6, 1966 (copy annexed as Exhibit H) she stated that the Annual Report which I indicated had been sent to her had not as yet been received by her. Later, in her letter to me dated July 25, 1966 (copy annexed as Exhibit I) she acknowledged receipt and noted:

"I was much interested in all the news of Sing-Out '66 especially in Spain. From various articles in the press here I gather that that country is in a period of transition where the young generation is going to have a great part in shaping the future of the country. I feel the visit was providential at this time."

Then in her letter dated August 31, 1968 to William F. Wilkes, MRA'S Director of Life Income Fund, (copy annexed as Exhibit J) plaintiff acknowledges receipt of his letter of July 15th "and the interesting Annual [1967] Report".

Plaintiff after indicating approval of these activities by MRA itself, has no valid reason why she waited for eight years before instituting this action.

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Functions of Up With People Inc.

The programs of Up With People and Sing Out conducted by MRA became so successful that in the year 1968 the directors of MRA determined to support the organization of a separate nonprofit corporation to take over these functions.

In that connection the Chairman of the Board of MRA in his Annual Report to contributors for 1968, (copy being submitted as Exhibit K) stated (p. 2):

"Moral Re-Armament since its beginning has aspired to carry mankind forward to a new age. In pursuing this goal, MRA has moved as an evolving expansive force relating itself to the live issues of the day, using fresh forms for its truth, developing new channels of action and communication.

In the past year Moral Re-Armament has continued to help carry forward the program of Up With People. The remarkable expansion of Up With People with its strong educational emphasis, made it seem advisable to the directors of Moral Re-Armament, Inc. to permit and encourage the formation of a new separate, nonprofit corporation in order to best develop the program's unique educational potential, and facilitate its further rapid expansion. The transfer of the Up With People program to Up With People Incorporated took place on September 1, 1968. This transfer will in no way replace, supplant or be a substitute for Moral Re-Armament or any of its other activities."

* * *

Affidavit of Donald P. Birdsall in Support of Motion for Summary Judgment, etc.

Up With People, Inc. was incorporated as a nonprofit educational and charitable organization under the laws of California in the year 1968. It has broad educational and charitable powers. A copy of its Charter is annexed hereto as Exhibit L.

A description of the functions and activities of Up With People Inc. are set forth in its Annual Reports for the years, 1969, 1970, 1971 and 1972, copies of which will be submitted to the Court, and copies delivered to plaintiff's attorneys.

The origin and purposes of Up With People, Inc. are succinctly summarized in an address delivered on December 16, 1971 by Mr. J. Blanton Belk its President, a copy of which is annexed hereto as Exhibit M, as well as in its current 1973 publication "Up With People" copy annexed hereto as Exhibit N.

When it was organized, UWP applied to the Federal Government for tax exempt status and annexed hereto as Exhibit O is its application. Its application recited that UWP succeeded to functions formerly performed by MRA. It was granted exemption as an "education and charitable" organization. (copy annexed hereto as Exhibit P)

Upon its organization, MRA contributed funds and property to UWP and thereafter made further contributions as it is submitted, the Directors of MRA had clear discretion to do under ¶2D of its Charter.

Up With People is both an educational and a charitable institution. Foremost among its charitable endeavors is the financial contribution it makes each year to over two-thirds of the young men and women who participate in its program. This takes the form of scholarships ranging in value from \$1,500 to \$2,000 granted to some 190 of the 260 youths from every social, racial,

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religious, and economic background coming from every part of this country as well as some 17 foreign countries. Beyond this, it is a normal part of Up With People's activities to participate in benefit performances for national and local charities such as Multiple Sclerosis, the United Community Fund, and the Opportunities Industrialization Center, Inc. Recently a small cast of Up With People was flown to the island of Molokai, Hawaii, where they gave a special benefit performance for the leper colony. Finally, as part of Up With People's community relations program, free performances have often been scheduled in intercity high schools, outdoor street shows in such places as Harlem and Los Angeles, as well as in hospitals and correctional institutions.

The following special performances by UWP are scheduled to take place in New York City in the near future: (1) A one-hour T.V. special on April 19, 1973 at 10 P.M. over Channel 2 (CBS); and (2) Two-hour performances at Carnegie Hall at 8:30 P.M. on May 30th and May 31st, 1973.

UWP is being financially supported half from tuition paid by the students in UWP educational programs, receipts from the sale of books and records and receipts from performances (where not given charitably) while the other half is derived from contributions from corporations, individuals, foundations. UWP hopes to secure additional funds in the future so that it may enlarge its Scholarship Fund available for needy and worthy students. It is not depending upon such support coming from MRA. Of course UWP hopes that MRA will continue its support in the future as it has done in the past. But there is no assurance that when the funds contributed by plaintiff vest in MRA upon the death of plaintiff sometime in the future, the funds will then be used to support UWP in its activities.

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I believe that UWP is an effective and important force in these troubled times benefiting those who participate in its programs as well as the people with whom they come in contact. Its programs have been commended by President Nixon, senators, congressmen, educators and others. See for example as Exhibit Q a group of such communications.

I respectfully submit that not only did MRA have authority to carry on the Up With People and Sing-Out program itself but it had also clear authority under its Charter to have supported UWP in the past and if the Directors of MRA so determine, to support it in the future.

I further respectfully submit that since the Directors of MRA are vested with broad discretion as to the application of the funds of MRA, the plaintiff has no valid right to complain and insist that her judgment—if it is really her judgment—should be substituted for that of the Directors of MRA.

Since plaintiff claims that MRA is acting *ultra vires*, our attorney has included provision in the annexed order to show cause for service of a copy of the order to show cause and annexed affidavits upon the office of the Attorney General of the State of New York.

No previous application for the relief requested herein has been made by UWP to any court or justice thereof.

Wherefore, I respectfully request that the annexed order to show cause be signed providing for service of the motion and that upon the return date, the motion by UWP to dismiss the complaint against it should be granted as well as such other and further relief as may be just and proper in the premises.

(Sworn to by Donald P. Birdsall on April 3, 1973.)

**Affidavit of Henry L. Bayles in Support of Motion for
Summary Judgment, etc.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

ANNELOU TEIXEIRA, individually and on behalf of all other
persons similarly situated,

Plaintiff,
vs.

MORAL RE-ARMAMENT, Inc., UP WITH PEOPLE INCORPORATED
and KIDDER, PEABODY AND COMPANY,

Defendants.

State of New York,
County of New York, ss:

HENRY L. BAYLES, being duly sworn deposes and says
that I am the attorney for defendant Up With People
Inc. (hereafter UWP) and respectfully submits this
affidavit in support of the motion by said defendant to dis-
miss the complaint against it.

Under the authorities, plaintiff's claim is not improved
by the fact that her attorneys have seen fit to include
it in a class action. It is submitted that if plaintiff herself
has no meritorious claim or is barred from maintaining this
action for injunctive relief, the action should be dismissed
at the outset.

(A) Lack of Merit of Plaintiff's Claim

(1) I respectfully submit that the moving affidavit of
Donald P. Birdsall, Executive Vice-President of UWP and

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annexed exhibits clearly show that there is no merit whatsoever to the claim asserted by plaintiff that the defendant, Moral Re-armament, Inc. (hereafter MRA) as a matter of law had no right to support UWP in the past or to do so in the future; and that accordingly, the complaint, seeking injunctive relief against such action in the future, should be dismissed.

(2) I further respectfully submit that since Mr. Birdsall's affidavit shows (pp. 11, 12) that plaintiff herself approved the action of MRA in supporting the Sing-Out and Up With People program as part of its own activity from 1965-1968, she has no right to complain if MRA chooses to support UWP in carrying on the same program subsequent to 1968.

(3) I also respectfully submit that since the facts show (a) that plaintiff ever since 1965 was aware of the activities of MRA in supporting this program and (b) that she failed to institute any action for eight years until January 1973, she is barred by laches and limitations from maintaining this action for injunctive relief.

(B) Lack of Propriety of Class Action

(1) The moving affidavit (Birdsall, p. 9) shows that plaintiff is an intelligent person and well able financially to maintain independent litigation if she chooses to do so. It is submitted that if plaintiff obtained an injunction against the action of which she complains in an independent suit, it would be just as effective as if obtained in a class action, and that there is therefore no real necessity for this class action which seeks the same relief.

(2) Further, it is believed that one of the real purposes, if not the sole purpose, in the institution of this class action

Affidavit of Henry L. Bayles in Support of Motion for Summary Judgment, etc.

by plaintiff's attorneys is to obtain the names and addresses of MRA's contributors—alleged to be the members of the class—so that plaintiff's attorneys who have continuously represented a dissident group competing with MRA, may use this list of contributors for the benefit of the dissident competing group.

The dissident group represented by the same attorneys in recent litigation, was enjoined and thereafter held in contempt in a suit instituted by MRA in the Supreme Court, New York County.

It is in order to discuss this other litigation since certain facts, ascertained from an examination of the papers on file, are relevant here. The papers on file in that litigation in the New York County Clerk's Office under Index # 4472—1971 will be requisitioned for use on this motion. In this affidavit, the page references in parenthesis (R-) refer to the page in the Record on Appeal and in the Supplemental Record on Appeal (SR-) in that litigation.

Prior Litigation

Prior to November 16, 1970, a small group of persons broke away from MRA and set up their own organization and began to compete with MRA and to divert contributions from MRA to the dissident group.

On November 16, 1970, the dissident group, represented by the same attorneys who now represent plaintiff, filed a certificate of incorporation in New York under the name of "The Oxford Group-MRA" (see SR 127-137), a name very similar to the original name of MRA. (Birdsall, p. 6, Exhibit A)

Further ¶ Second 1 of the Charter of the dissident group was almost identical in phraseology with ¶ 2A of MRA's Charter. In addition the dissident group in its publicity

*Affidavit of Henry L. Bayles in Support of Motion for
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began using the names of "moral rearmament" and "MRA" and "The Oxford Group."

When MRA learned of this, it instituted a proceeding under Sections 133, 135 and 397 of the General Business Law of New York against the dissident group for an injunction and other relief. In contesting the action, the dissident group was represented by the same attorneys.

After a full hearing, the Court (Hon. Sidney H. Asch) rendered an order and judgment in favor of MRA which contained a broad injunction restraining the dissident group from using the words "Moral Re-Armament" or "MRA" or "The Oxford Group" or any similar name in its name or as part of any of its activities. (R 22-28)

After the injunction was granted, the name of the dissident group was changed to "Caux Challenge-USA." A letter dated December 1971 by Mitchell Bingham, the Executive Director of Caux Challenge-USA, discusses the litigation. A copy of this letter is annexed hereto as Exhibit A. (R. 33-36)

It may be noted that in this letter Mr. Bingham stated that after conferring with their attorneys, they reached the conclusion that MRA had a perfect right to support Up With People. In that connection the letter stated (p. 2):

Unfortunately, there was nothing we could do legally to prevent Moral Re-Armament, Inc. from supporting Up With People because of the breadth of Moral Re-Armament, Inc.'s Charter as revised in 1957."

That letter also recognized (see p. 1) that the Sing-Out and Up With People program was begun in 1965 and not in 1968 as the complaint in the instant action alleges.

The letter goes on to state that the dissident group

Affidavit of Henry L. Bayles in Support of Motion for Summary Judgment, etc.

planned to "faithfully obey the Court's order" (p. 4) and would "delete any reference to 'The Oxford Group' or to 'Moral Re-Armament'". (p. 3)

However in a subsequent letter dated January 1972, (copy annexed hereto as Exhibit B, R-89, 90) Mr. Bingham stated that under "advice of counsel" the dissident group changed its mind and in its amended Charter and in its activities, it continued to include the words, "The Oxford Group" and "Moral Re-Armament".

As a result, an application was made by MRA to punish the dissident group for contempt. This application was opposed by the same firm of attorneys.

After a full hearing, the dissident group was adjudged in contempt and fined and ordered to desist by order of Mr. Justice Streit dated April 28, 1972 (R 59). On appeal by the dissident group, the order was unanimously affirmed by the Appellate Division, First Department, by order dated, January 25, 1973. Thereafter the application by the dissident group for rehearing was denied by the Appellate Division by order dated March 22, 1973.

During the course of the injunction and contempt proceedings, the dissident group sought unsuccessfully to examine MRA before trial and require it to produce various matters including the following: (R 146)

"A list of all gifts, donations, contributions, devises and bequests made to Plaintiff [MRA] from January 1, 1965 to the present time by any person, estate, firm, partnership or corporation."

In the present action the same attorneys now representing plaintiff by a recent Notice returnable April 9, 1973 (copy annexed hereto as Exhibit C) are requesting that this Court approve the instant suit as a proper class

*Affidavit of Henry L. Bayles in Support of Motion for
Summary Judgment, etc.*

action and in that connection to determine "the membership of the class" i. e., the names and addresses of contributors to MRA under the Life Income Agreements.

It is believed that by such application plaintiff's attorneys are again attempting to obtain such a list of contributors for the benefit of the dissident group which they represent.

I respectfully submit that the affidavits and exhibits submitted by defendant upon this application disclose that the plaintiff as a matter of law has no valid and meritorious claim and that the defendant's motion should in all respects be granted and such other and further relief as may be just and proper in the premises.

No previous application for this or similar relief has been made to any Court of justice thereof.

(Sworn to by Henry L. Bayles, April 6, 1973.)

**Notice of Motion of Defendant Moral Re-Armament,
Inc., for Summary Judgment Dismissing Complaint,
etc.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

SIRS:

Please Take Notice, that upon the annexed affidavit of George A. Vondermuhll, Jr., sworn to April 18, 1973, and annexed exhibits, the pleadings and proceedings herein, and the papers on file in the Office of the New York County Clerk in *Re Moral Re-Armament, Inc. (The Oxford Group-M. R. A. et al.,)*, Index No. 4472-1971, the undersigned will move this Court at a Motion Term, at the Court House, Foley Square, New York, N. Y., on the 30th day of April, 1973, at 9:30 a. m., before Hon. Arnold Bauman, for an order pursuant to FRCP 12(b)(6) and 56 granting summary judgment in favor of defendants and dismissing the complaint, and for such other and further relief as may be just and proper.

Yours, etc.

WASHBURN & GRAY
Attorneys for Defendant,
Moral Re-Armament, Inc.
Office & P. O. Address
36 West 44th Street
New York, N. Y. 10036
(212) MU 2-4025

*Affidavit of George A. Vondermuhll, Jr., in Support of
Motion for Summary Judgment, etc.*

To:

Messrs. Parker, Duryee, Zunino, Malone & Carter
Attorneys for Plaintiff
1 East 44th Street, New York, N. Y. 10017

Henry L. Bayles, Esq.
Attorney for Defendant, Up With People Inc.
55 Liberty St., New York, N. Y. 10005

Messrs. Walsh & Frisch
Attorneys for Defendant, Kidder, Peabody & Co.
250 Park Avenue, New York, N. Y. 10017

**Affidavit of George A. Vondermuhll, Jr., in Support of
Motion for Summary Judgment, etc.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

State of New York,
County of New York, ss:

GEORGE A. VONDERMUHLL, Jr., being duly sworn, deposes
and says:

1. I am Secretary and a Director of defendant, Moral
Re-Armament, Inc. (hereafter called "MRA"), a New York
non-profit corporation, with its principal office at 124
East 40th Street, New York, New York, and I reside in
New York City. I have been associated with MRA ever

Affidavit of George A. Vondermuhll, Jr., in Support of Motion for Summary Judgment, etc.

since its incorporation in 1941, and with its founder, Dr. Frank N. D. Buchman, and The Oxford Group since 1935. I respectfully submit this affidavit in support of MRA's motion for summary judgment dismissing the complaint herein for failure to state a claim upon which relief can be granted.

2. In her complaint in this purported class action, the plaintiff seeks an injunction against MRA, permanently enjoining it as well as defendant Kidder Peabody and Company, from transferring to defendant Up With People Incorporated (hereafter called "UWP") any moneys heretofore contributed by plaintiff and others to MRA's Life Income Fund.

3. MRA's Life Income Fund was established in 1964. It permits a donor to make a gift to MRA under a Life Income Agreement by which MRA obligates itself to pay income for life to a beneficiary and, if desired, upon his death to another life beneficiary. The gift is pooled with other such gifts to form a pooled life income fund which is invested and reinvested, and the income therefrom is distributed quarterly to the named beneficiaries in proportion to the respective amounts donated to the fund. On the death of the last income beneficiary under a given agreement, the corresponding capital sum is withdrawn from the Life Income Fund for use by MRA.

4. In paragraph 8 of her complaint the plaintiff alleges that MRA represented to her and the other members of the class that any moneys contributed by them to the Life Income Fund would be used in accordance with the purposes of MRA expressed in its certificate of incorporation, when MRA withdrew money from the fund upon the death of the life beneficiary; *i. e.*, that MRA would not use it other-

Affidavit of George A. Vondermuhll, Jr., in Support of Motion for Summary Judgment, etc.

wise than in accordance with such purposes. She further alleges that beginning in or about 1968 said moneys were not used to promote the goals and purposes of MRA. (Para. 9).

5. At paragraph 13 plaintiff quotes from the "purposes" article of MRA's certificate of incorporation. However, it is submitted that her quotation is incomplete and inaccurate, and your deponent respectfully invites the Court's attention to a certified copy of MRA's charter which is being handed up on the return day of this motion.

6. Referring to MRA's charter, its purposes are set forth in Article 2. Subparagraph A provides as follows:

"A. The advancement of the Christian religion, and in particular by the means and in accordance with the principles of The Oxford Group and First Century Christian Fellowship, founded by Frank Nathan Daniel Buchman, and its program of Moral Re-Armament, whose aim is personal, social, racial, national and supernational salvation."

7. It is respectfully submitted that MRA's acts in contributing financial support to UWP are entirely consistent with the means and principles of The Oxford Group and Moral Re-Armament as stated in MRA's charter, Art. 2A, above. Today "The Oxford Group" and "Moral Re-Armament" are terms which are coextensive in meaning, a fact which was judicially acknowledged in 1971 in a proceeding for injunction in the Supreme Court, New York County, entitled "In the Matter of the Application of Moral Re-Armament, Inc., Petitioner, for an Injunction Pursuant to Sections 133, 135 and 397 of the General Business Law against The Oxford Group—M.R.A., and Harry Almond *et al.* Respondents", Index No. 4472-1971, the files of which

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are being requisitioned from the New York County Clerk's Office for use on UWP's motion for summary judgment which has previously been noticed for the same time as MRA's motion. As to what the means and principles of MRA are, I believe that out of hundreds of sources that could be cited they are especially well represented in "Remaking the World", the collected speeches of Dr. Frank N. D. Buchman, MRA's founder (Pocket ed. June 1961, Blandford Press, London). The Board of Directors of MRA at its latest annual meeting on April 14-16, 1973, was in agreement that "Remaking the World" continues to express the basic principles of The Oxford Group and Moral Re-Armament. The Court's attention is respectfully invited to a copy of "Remaking the World" which is being handed up at the argument of this motion.

8. Although your deponent has been active with The Oxford Group and MRA for the greater part of his life, he has yet to find one all-encompassing definition of its principles and philosophy. However, in order to show that MRA's acts in supporting UWP were in accordance with these principles, your deponent respectfully sets forth from "Remaking the World" some of Dr. Buchman's own definitions and statements of the means and principles of The Oxford Group and Moral Re-Armament, which the Directors of MRA have followed under Art. 2A of its charter in the advancement of the Christian religion—one of MRA's purposes. Incidentally, the reference in Art. 2A of the charter to First Century Christian Fellowship is to another early name for Dr. Buchman's work, but that name is no longer used.

9. "The Oxford Group":

Affidavit of George A. Vondermuth, Jr., in Support of Motion for Summary Judgment, etc.

(p. 4)

"The Oxford Group is a Christian revolution, whose concern is vital Christianity. Its aim is a new social order under the dictatorship of the Spirit of God, making for better human relationships, for unselfish co-operation, for cleaner business, cleaner politics for the elimination of political, industrial and racial antagonisms."

(p. 28)

"The Oxford Group is a Christian revolution for remaking the world. The root problems in the world today are dishonesty, selfishness and fear—in men and, consequently, in nations. These evils multiplied result in divorce, crime, unemployment, recurrent depression and war. How can we hope for peace within a nation, or between nations, when we have conflict in countless homes? Spiritual recovery must precede economic recovery. Political or social solutions that do not deal with these root problems are inadequate. Manmade laws are no substitute for individual character. Our instant need is a moral and spiritual awakening. Human wisdom alone has failed to bring this about. It is only possible when God has control of individuals."

(p. 62)

"* * * The Oxford Group is a phalanx of God-controlled people from all lands who are constantly waging a world war against selfishness. It has been in action since the last war training men for the moral re-armament of the nations."

10. "Moral Re-Armament":

Affidavit of George A. Vondermuhll, Jr., in Support of Motion for Summary Judgment, etc.

(p. 45)

"The world's condition cannot but cause disquiet and anxiety. Hostility piles up between nation and nation, labour and capital, class and class. The cost of bitterness and fear mounts daily. Friction and frustration are undermining our homes.

"Is there a remedy that will cure the individual and the nation and give the hope of a speedy and satisfactory recovery?

"The remedy may lie in a return to those simple home truths that some of us learned at our mother's knee, and which many of us have forgotten and neglected—honesty, purity, unselfishness and love.

"The crisis is fundamentally a moral one. The nations must re-arm morally. Moral recovery is essentially the forerunner of economic recovery. Imagine a rising tide of absolute honesty and absolute unselfishness sweeping across every country! What would be the effect? What about taxes? Debts? Savings? A wave of absolute unselfishness throughout the nations would be the end of war.

"Moral recovery creates no crisis but confidence and unity in every phase of life. How can we precipitate this moral recovery throughout the nations? We need a power strong enough to change human nature and build bridges between man and man, faction and faction. This starts when everyone admits his own faults instead of spot-lighting the other fellow's.

* * *

Affidavit of George A. Von der muhl, Jr., in Support of Motion for Summary Judgment, etc.

(p. 47)

"New men, new homes, new industry, new nations, a new world."

It will be noted from Dr. Buchman's September 1938 speech, "Pattern for Statesmanship" (pp. 59-61), which he made three months after launching Moral Re-Armament, that at that time he referred to "The Oxford Group" as the vehicle of his philosophy (p. 60) and "Moral Re-Armament" as the concept itself (p. 61). He then said:

(p. 60)

"* * * Its aim is to remake the world and provide those principles of living that cumulative experience has proved to be practical and demonstrable everywhere.

"* * * It goes to the root of the problem—a change of heart."

(p. 85)

"MRA stands for a prejudice-free level of living. It stands for a common denominator of immediate constructive action for everyone, above party, race, class, creed, point of view or personal advantage. It is God's property—the new thinking, the new leadership that everyone wants. It means God in control personally and nationally. It means the knowledge and exact information that God's guidance brings. It is God's gift to bring an insane world to sanity."

(p. 86)

"MRA means honesty, purity, unselfishness and love—absolutely, personally and nationally. MRA

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means power to change people—our enemies as well as our friends—the other fellow and the other nation.

* * *

“The aim of MRA is twofold: first, to restore God to leadership as the directing force in the life of nations; and then to work for the strengthening of morale within a country and so build a healthful national life.”

(p. 91)

“America is not without her problems in business, the home, in industry, in civic and in government life. We need a rededication of our people to the elementary virtues of honesty, unselfishness and love; and we must have the will again to find what unites people rather than what divides them. It must become the dawn of a new era, a new age, a new civilization.”

(p. 107)

“A new world philosophy is needed, a world philosophy capable of creating a new era of constructive relationships between men and nations. A new statesmanship and a new leadership will ensue from this heightened quality of thinking and living.

“This world philosophy will emerge as people begin to get their direction from the living God. It will be within the framework of a hate-free, fear-free, greed-free quality of living.”

It will be noted that in the speeches, “A World Philosophy Adequate for World Crisis”, 1939 (pp. 106-115), as in many

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other of his speeches, Dr. Buchman outlines the principles of MRA independent of formal religious dogma.

(p. 114)

"* * * MRA is open to all and bars none. It is a quality of life. You don't join and you can't resign. You live a life."

(p. 133)

"Moral Re-Armament creates the qualities that make democracy function. It is simple, non-partisan, non-sectarian, non-political. It gives to every man the inner discipline he needs and the inner liberty he desires. It calls out and combines the moral and spiritual responsibility of individuals for their immediate sphere of action.

"It builds for democracy an unshakable framework of actively selfless and self-giving citizens * * *

"The work of Moral Re-Armament to heighten public morale and strengthen the community's moral fibre is carried forward by meetings, radio broadcasts, patriotic dramatizations, books and literature, and by Round Tables where, in an atmosphere of mutual trust, Labour and Management sit down together and find the solution to their problems."

(p. 166)

"Catholic, Jew and Protestant, Hindu, Muslim, Buddhist and Confucianist—all find they can change, where needed, and travel along this good road together."

(p. 173)

"We have had half of the twentieth century. Who has the key to the second half? The nation whose youth finds the answer to nihilism and apathy."

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(p. 205)

“A nation where everyone cares enough and everyone shares enough, so that everyone has enough, will pattern a new social and economic order for this and all future generations.

“A nation at peace within itself will bring peace to the world.

“A nation which makes *What is Right* regnant in personal, industrial, political and national life will pioneer the next historic step of progress and destiny for all mankind.”

(p. 216, quoting a labor leader from India)

“‘MRA is a constructive force, whose influence benefits the workers and industrialists. It changes people as well as the social system. This idea transcends geographical divisions, racial distinctions, party differences and class conflict.’”

(p. 239)

“Men of science understand that weapons can only buy time. An idea must win the world. And the youth of a scientific age respond to Moral Re-Armament because it is the idea that answers the basic divisions of race, class and ideology.”

11. In carrying out the above principles, MRA, like its predecessor unincorporated bodies, The Oxford Group and First Century Christian Fellowship, and like its founder, Dr. Frank Buchman, in his still earlier work, has constantly been seeking out, testing, and employing new and varied methods and approaches. (See Alan Thornhill's introduction, “Frank Buchman” in “Remaking the World”, p. xvii). Some methods and techniques are, of course, specifically mentioned in MRA's certificate of incorpora-

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tion, Art. 2B, such as publications, films, songs, music, radio and television (a far-sighted provision for a charter drawn in 1941). Others, including sermons, speeches, panel and round-table discussions, conferences, house-parties, assemblies, concerts and stage plays, have been carried out under the general purposes and powers of the charter either directly by MRA or by other organizations or institutions engaged, supported or organized by MRA for such purposes as authorized in Art. 2D(2) of the charter. (See, e. g., "Remaking the World", pp. xviii, 122, 139, 158-9, 168, 189, 193, 214, 216, 219, 224, 233, 236-7, 243, 246, 251, 255-6, 257, 260, 273, 279-80, 281, 290).

12. (a) One potent weapon of and for MRA was the handbook, "You Can Defend America", with foreword by General Pershing (see "Remaking the World", pp. 363-5). Published in 1941 its program of "Sound Homes, Team-work in Industry, National Unity" elicited universal support before and after Pearl Harbor from Congressmen, State Legislators, Chambers of Commerce, labor unions, churches, schools, defense councils and civic bodies.

(b) Starting in Detroit, a strategic use of the handbook, "You Can Defend America", was made in the public schools in many states at this time. Courses in citizenship based upon the book were given as part of the regular curriculum. Thousands of essays written by children as part of the course reveal a poignant picture of American family life as well as an encouraging ability in the students to understand and apply the principles taught—such as, ". . . National Character is the Core of National Defense; Congress Can't Vote It; Dollars Won't Buy It; It's Your Job to Build It." In many cases, the "You Can Defend America" courses led not only to heightened morale in the schools but also to better race and community relationships.

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In its issue of May 6, 1944, the "Army-Navy Journal", noting that "We are fighting a war not alone of arms but of ideas", recognized MRA as "an important factor in building this fighting spirit both on the battle front and on the home front."

(e) Meanwhile, a musical revue, "You Can Defend America", based on the book, was being presented to public and private audiences in 22 states. The revue proved to be only the first of a proliferating series of dramatic productions which have since spearheaded MRA's dissemination of Christian teachings in many languages and lands. Of particular note were the industrial play, "The Forgotten Factor", brought to Washington by then Senator Truman, AFL and CIO Presidents Green and Murray and other national leaders; the postwar musical revue, "The Good Road", an important part of MRA's contribution to the democratic re-orientation of Germany and to Franco-German reconciliation, a contribution attested to by both French Premier Schuman and German Chancellor Adenauer; the Broadway musical, "Jotham Valley"; the musical play, "The Crowning Experience", credited as making a major contribution to peaceful integration and inter-racial understanding in Atlanta and elsewhere; and "Space is So Startling", Peter Howard's musical dramatization of the Soviet-American race into space and mankind's search for harmony in the home and in and between nations.

(d) The history of MRA since its beginning has been one of aid, direct and indirect, financial and through services, to many kinds of organizations and causes, in the United States and abroad.

(1) During World War II, MRA provided without compensation services and material for per-

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formances of the revue, "You Can Defend America", on behalf of state and local Civil Defense Councils in 20 states.

(2) Organized, staffed and operated at its own expense training centers for defense councils in the states of California, Michigan, Massachusetts, Maine, Ohio, Virginia and Georgia.

(3) Similarly provided revue performances, management-labor round tables, training conferences, etc., for industrial concerns engaged in war production—e. g., shipyards, ammunition plants, automotive and aircraft factories.

(4) Offered the same services for labor unions in war work—e. g., AFL, CIO (national and state), steelworkers, auto workers, machinists, etc.

(5) Likewise, for peace-time industries involving problems affecting the national economy—e. g., U. S. airline industries (1950-51), Eastern, National and Pan Am; also, in cooperation with MRA affiliates overseas, to British and German coal industries, Brazilian docks, Japanese heavy electric and mining industries.

(6) Aid on many occasions to foreign governments, from some of which Dr. Buchman subsequently received high decorations. This aid was usually in the form of free provision of full-time workers for long periods, purchase, maintenance and operation of training centers, payment of travel of foreign nationals to international conferences and training centers. In Japan, MRA provided personnel, etc., for government-organized training for their workers in National Railways, telecommunications, National Police, for many months.

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(7) Educational aid was provided to many schools, public and private, including teaching materials and visiting speakers. Later, MRA provided direct financial grants and provision of personnel for the founding of Mackinac College and its subsequent operation. Similar assistance was provided for high school education of students in national sing-out casts from 1965 to 1968. (See brochure, "The Sing-Out High Schools 1967-1968" annexed hereto as Exhibit A).

(e) From the beginning of MRA, education has been one of its direct purposes and activities, in accordance with Arts. 2B and 2C of its charter. See "Remaking the World", p. 347, where then French Foreign Minister Schuman referred to MRA as "a school where Christian principles are not only applied and proven in the relationships of man to man, but succeed in overcoming the prejudices and enmities which separate classes, races and nations." At its conferences MRA provided courses in ideological training, personal and public relations, lectures in history, psychology, current events and Bible studies in relation to present-day problems, at least as late as 1970.

13. In keeping with Dr. Buchman's focus on youth as the "key to the second half of the century" ("Remaking the World", p. 173), in 1964-1965 MRA responded to the needs and demands of youth for a medium of expression by sponsoring conferences at its center at Mackinac Island, Michigan. While music had always had an important place in MRA's programs, in the middle '60's MRA recognized that the type of musical "sing-out" program which emerged almost spontaneously at the Mackinac conferences was a musical and dramatic form which provided youth an opportunity for inspiring and changing their generation and

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the nation in accordance with the principles of MRA. By the middle '60's rock music became concerned with serious themes and social problems (see World Book Encyclopedia, "Rock Music" by Ralph J. Gleason in Vol. Q-R, p. 354b, 1972).

14. MRA had at its disposal a musical trio, the Colwell brothers, who had sacrificed lucrative Hollywood contracts to devote their talents and energies to MRA programs in all parts of the world (see "Remaking the World", pp. 255-6, 279-80, 281, 290). The Colwell brothers and band leader Herbert Allen were the nucleus of a rapidly growing group of talented and creative young people who made up the MRA "sing-out" programs, beginning with "Sing-Out '65". (See, e. g., MRA Annual Report 1965 which is being handed up to the Court).

15. As already noted by Mr. Birdsall of UWP in his moving affidavit, p. 11, and Exhibits F, I and J annexed thereto, the plaintiff herein knew that MRA was engaged in its "Sing-Out" activities and heartily approved of them. From the time your deponent first met the plaintiff in about 1948, your deponent knew her as an able and active participant in MRA programs, particularly in the European countries. She is an accomplished linguist, and often used her talents in interpreting at MRA conferences and in writings. She has also participated in the development of many new and original MRA productions and programs, to which she made valuable contributions intellectually, spiritually and financially. Thus, I believe that her complaint is the result of a misunderstanding of the fact that MRA's sponsorship and support of its sing-out programs and then of UWP in the same endeavors have taken place because the medium is precisely one which permits young people to further the basic ideas and purposes of MRA.

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16. Among the important contributions of the Colwell brothers to MRA's sing-out program was the composition of key songs (see annexed Exhibit B, a program of MRA's "Sing-Out '65" performance at Hollywood Bowl). One of their songs, "Up With People", so well embodied the basic theme of the program that it became the title of MRA's whole musico-dramatic production. The song, "Up With People", was copyrighted by MRA in 1965. There is being handed up to the Court a copy of MRA's publication, "How to Create Your Own Sing-Out", containing the lyrics and music of many of the songs used at MRA's sing-outs, including "Up With People" (p. 51) and "What Color is God's Skin?" (p. 29), both of which are still prominent in the repertoire of UWP's current shows. The Court's attention is also respectfully invited to the annexed Exhibit C, a copy of UWP's current program and book of lyrics.

17. Mr. Birdsall has already explained in his moving affidavit the reasons why MRA's sing-out activities resulted in the incorporation in 1968 of UWP (Birdsall aff., pp. 12-13, and annexed statement of MRA's Chairman in Exh. K, p. 2). Your deponent submits that the legal separation of UWP from MRA does not mean that there was a departure from the basic goals and principles of MRA. In fact, the message of the youth who participate in UWP can be understood not only from the lyrics of their songs, but from the effectiveness with which the UWP programs bring people together, and also from the quality of living which is achieved by its participants. I believe that UWP's message, its mobilization of people and the beneficial effects on its young participants all accord with the means and principles of MRA epitomized in "Remaking the World" (see, e. g., "Remaking the World", p. 220; Exhibit Q annexed to Birdsall aff.).

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18. MRA from its inception has never been a static, unchanging formal program, but one that is dynamic, innovative and constantly seeking opportunities for developing new means and methods of reaching people in response to the needs of a changing society. Thus, despite the success and growth of MRA's sing-out program, which later became UWP, that program is not an "end-all" for MRA. On the contrary, MRA is resolved—as reaffirmed at the latest meeting of its Board of Directors on April 16, 1973—to continue to explore new avenues and means to accomplish its purposes.

19. I respectfully submit that when MRA contributed funds to UWP, it acted properly and in accordance with the means and principles of the program of Moral Re-Armament as required by Art. 2A of its charter. I further believe that the other provisions of Art. 2 of its charter given even broader authorization to MRA's directors, as already pointed out by Mr. Birdsall in his affidavit (pp. 7-8). Accordingly, your deponent respectfully submits that the plaintiff ought not to be permitted to substitute her judgment for that of MRA's Board of Directors.

WHEREFORE, it is respectfully requested that the Court make an order granting summary judgment in favor of the defendants and dismissing the complaint against them, and for such other and further relief as to the Court seems just and proper.

(Sworn to by George A. Vondermuhll, Jr., on April 18, 1973.)

Affidavit of Annie Louise Teixeira de Mattos, also known as Annelou Teixeira, in Opposition to Motion for Summary Judgment Pursuant to F.R.C.P. 56 and 12(b) (6).

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

Republic of Italy,
City of Rome, ss:

ANNIE LOUISE TEIXEIRA DE MATTOS, also known as Annelou Teixeira, being duly sworn, deposes and says:

1. That I am the Plaintiff in the within action and I respectfully submit this affidavit in opposition to the motions for summary judgment made by Defendants Moral Re-Armament, Inc. ("MRA") and Up With People ("UWP") pursuant to F.R.C.P. 56 and 12(b) (6).¹

2. This action in part seeks a permanent injunction *** enjoining and restraining MRA and Kidder, their respective officers, directors, employees, agents, attorneys or any one else acting in their behalves; from transferring, paying out or disbursing any monies heretofore contributed by Plaintiff and the members of the class to the Fund, except in furtherance of the purposes and goals of MRA, as set forth in its Certificate of Incorporation;". Attached hereto, made a part hereof and labelled Exhibit "A" is a copy of the complaint herein. The complaint also seeks to permanently enjoin UWP from accepting any further sums from MRA or Defendant Kidder, Peabody and Company ("Kidder").

¹Identical motions are made by both of the aforesaid Defendants but on different grounds. This affidavit will oppose both motions.

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3. As appears more fully from Exhibits "A" and "B" to the complaint, on or about June 21, 1965, a date prior to the abandonment by MRA of the principles of Dr. Frank Buchman, I entered into two Life Income Agreements with MRA pursuant to which I transferred \$50,000.00 to the Moral Re-Armament Investment Fund.² Pursuant to the terms of both agreements, I am to receive the income from the investment of my contribution during the period of my life, and upon my death, MRA will receive the total contribution.

4. I have brought this litigation as a class action inasmuch as there are a large number of persons who have made contributions to the Fund. These are in the same circumstances as mine and will be directly affected by any judgment herein. The institution of this litigation will prevent the subsequent commencement of a large number of actions by each member of the class. Accordingly, I am advised that a class action is the most expeditious manner of deciding this controversy.³

5. I have reviewed the affidavits of Donald P. Birdsall, Henry L. Bayles, Esq. and George A. Vondermuhll, Jr. submitted in support of both motions for summary judgment. This affidavit and that of Thomas F. Tivnan submitted herewith in opposition are specifically designed to refute each and every assertion advanced by Defendants in support of their respective motions.

THE MOTION OF U. W. P.: The Affidavit of Donald P. Birdsall

²Kidder is the custodian of the Fund and is in the position of a stakeholder in this litigation.

³See para. 6-12 inclusive of the complaint.

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6. I am advised by counsel that a motion for summary judgment must successfully demonstrate to the Court that there are not present in the suit any triable issues of fact that require a plenary hearing. Parenthetically, I am advised by counsel that MRA and UWP have not interposed an answer yet so that the record is somewhat lacking as to what defenses will be interposed by these Defendants. The Birdsall affidavit, while not disputing the jurisdiction allegations of the complaint, sets forth six contentions which, it is alleged, should compel this Court to dismiss this action.⁴ These contentions will be considered on an ad seriatim basis.

(1)⁵ The Certificate of Incorporation of MRA reads in part as follows:

“2. The purpose or purposes for which it is to be formed are as follows:

A. The advancement of the Christian religion, and in particular by the means and in accordance with the principles of The Oxford Group and First Century Christian Fellowship, founded by Frank Nathan Daniel Buchman, and its program of Moral Re-armament, whose aim is personal, social, racial, national and supernational [sic] salvation.

B. To disseminate Christian teachings among the people of the United States and other countries by

⁴Birdsall affidavit, pps. 4-5, items (1) through (6) inclusive.

⁵Numbers in parenthesis referred to the items contained in the Birdsall affidavit; pps. 4-5. The Certificate of Incorporation of MRA is appended hereto as Exhibit “B” and includes a certificate of change of name filed in 1964.

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means of the preparation, publication and circulation of magazines, pamphlets, books, songs, music and other writings, or by means of radio or television broadcasts, or the use of sound or motion picture films.

C. To engage in one or more activities of a religious, charitable or education nature which may be necessary or proper to carry out said purposes or objects."

Mr. Birdsall's affidavit, page 5, states:

"Further, prior to the organization of UWP in 1968, I was Treasurer and a Director of defendant, MRA, also a nonprofit corporation, organized in the year 1941 for *education, charitable and religious purposes* * * *." (Italics added.)

Thus, Mr. Birdsall conveniently places the goals and purposes of MRA in reverse order in order to have them coincide with specific purposes of UWP. Attached hereto, made a part hereof and labelled Exhibit "C" is a copy of the certificate of incorporation of UWP. In pertinent part it states:

"(a) The specific activity in which the corporation is primarily to engage is the organization, coordination and education of individuals and groups with a view toward developing leadership, responsibility and understanding among individuals, races, classes, cultures and nations."

Clearly, the purposes of UWP do not pertain in any way to the purposes of MRA such as the advancement of the Christian religion, the concepts of the moral re-armament

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movement and the teachings of Dr. Buchman. *Most importantly, the activities of UWP are utterly unrelated to the concepts of the moral rearmament movement and the teachings of Dr. Buchman.* UWP does not seek to spread in the world the teachings of Dr. Buchman or the concepts of moral re-armament. As shall be clearly demonstrated subsequently in this affidavit, UWP seeks to completely disassociate itself from MRA. Yet, as alleged in paragraph "21." of the complaint herein, MRA contributed the following sums to UWP.

1968	\$ 178,841.00
1969	923,892.00
1970	1,753,497.00

Furthermore, Mr. Birdsall's credibility is placed in sharp focus when he describes UWP as a nonprofit corporation. I am led to believe that in 1969 UWP received gross contributions of \$4,274,000 for its fiscal year April 1, 1970 to March 31, 1971 while having expenses of only \$2,224,000.

Thus, there is a *clear triable issue of fact* in the case at bar as to whether MRA has the right to divert from its Life Income Fund money contributed by the class to further the work of moral re-armament and the teachings of Dr. Buchman to an organization whose purposes and activities do not have any relation to the foregoing. I am advised by counsel that this presents a clear triable issue of fact that requires a denial of these motions.

(2) As Mr. Birdsall has readily indicated, I have devoted a substantial portion of my life to the work of the

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moral re-armament movement as founded by Dr. Buehman. He outlined the theme of his movement as follows:⁷

"The Oxford Group is a Christian revolution, whose concern is vital Christianity. Its aim is a new social order under the dictatorship of the Spirit of God, making for better human relationships, for unselfish co-operation, for cleaner business, cleaner polities for the elimination of political, industrial and racial antagonisms.

A new spirit is abroad in the world today. A new illumination can come to everyone and bring men and women of every creed and social stratum back to the basic principles of the Christian faith, enhancing all their primary loyalties. The solution of our difficulties must come from such a spirit rising from within people.

Leaders in all walks of life are now convinced that our hope rests in a change of heart. One sees abundant evidence of this throughout the Empire. World-changing will come through life-changing.

To bring about this new world order the Oxford Group believes that a world-wide spiritual awakening is the only hope.

Upon a foundation of changed lives permanent reconstruction is assured. Apart from changed lives no civilisation can endure."

Clearly, the concept of the "Sing Out" movement of UWP does not square with the foregoing. Indeed, J. Blanton

⁷Buehman, Remaking the World, Blandford Press, London, 1961 pps. 4-5. A copy will be handed upon the return day of these motions.

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Belk, president and chairman of the board of UWP disclaimed any connection with the aims of Dr. Buchman. In "Up With People News", Vol. 1 No. 8 February, 1972 he stated:

"Up With People is not for any one point of view or philosophy. It is for everybody, and it will remain a full agent, ungoverned by any one group, industry or government but available to all." (A copy of the foregoing is attached as Exhibit "D").

Similarly, in the August 15, 1970 issue of "The Arizona Daily Star" Mr. Belk is quoted as saying the following in an article entitled "'Up With People' Shuns MRA Link":

"There is no connection between the Tucson-based Up With People and its founding organization, Moral Re-Armament, J. Blanton Belk, Jr., head of the youth-oriented endeavor, said yesterday.

* * * Belk refused to discuss any connection between Up With People and Moral Re-Armament or to answer questions about the group's origins."

(A copy of the article is attached as Exhibit "E")

In an article in the New York Times of August 10, 1970, Stewart Lancaster, then an official of UWP, was quoted as follows:

"'M.R.A. is a religious thing,' Mr. Lancaster said, 'and we were looking for a new means of ex-

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pression. Affiliation with M.R.A. was a handicap. I think that organization has seen its day. M.R.A. activity now is nothing but a drop in the bucket compared with its heyday. When Dr. Buchman was living, he had shows going all over, as well as publications and films.

But limited and rigid religious or political views, closely held, prevent growth. Many true-believer causes are dwindling today. Many are worthy but dogmatic and opinionated. Up With People is searching for a new life style with an open frame of mind."

(A copy of the article is attached as Exhibit "F")

As alleged in the complaint herein, paragraph 21., M.R.A. contributed the sum of \$1,753,497.00 to UWP. Thus, Mr. Belk's statement of August 15, 1970 set forth above is most charitably described as inaccurate. Attached hereto, made a part hereof and labelled Exhibit "G" is a copy of I.R.S. form 990 for 1970 of MRA setting forth the aforesaid contribution to UWP by MRA for the calendar year 1970. Mr. Birdsall, at page "4." of his affidavit [item (2)], states that MRA had a clear right to sponsor UWP and to cause its incorporation as a separate nonprofit tax exempt membership corporation. This statement in view of the foregoing is most incredible when one views the purpose clauses of both corporate charters; the express disavowal of MRA by the officers and directors of UWP at a time when UWP was receiving almost \$2,000,000 from MRA; and, lastly, but more importantly, that the activities of UWP do not in any way seek to further the teachings of Dr. Buchman. Clearly, the right of MRA

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to make such substantial contributions to an organization such as UWP which so clearly seeks to disassociate itself from MRA raises a triable issue of fact in the case at bar.

(3) and (4): With respect to my prior knowledge of the formation by MRA of enterprises known by and as "Sing Outs" and the like, the documents appended to Mr. Birdsall's affidavit are absolutely correct. However, as Mr. Birdsall is quick to point out, UWP was formed as a separate corporate entity in 1968. Its purposes and actions do not coincide with the teachings of Dr. Buchman. My contribution to the Life Income Fund was made in 1965, prior to the incorporation of UWP. All of the documents referred to in the affidavit of Mr. Birdsall pre-date the establishment of UWP. At that time and continuing up to the incorporation of UWP MRA conducted these activities as a means of disseminating the teachings of Dr. Buchman. As Exhibits "D.", "E." and "F." to this affidavit clearly indicate, UWP does not intend to associate itself with the teachings of Dr. Buchman or the moral re-armament movement. Thus, the funds contributed to the Life Income Fund by members of the class seeking to promote Dr. Buchman's teachings are in jeopardy. Mr. Birdsall states at page 12 of his affidavit:

"Plaintiff after indicating approval of these activities of MRA itself had no valid reason why she waited for eight years before instituting this action."

Clearly, this statement of Mr. Birdsall is a sham designed to befuddle this Court. UWP was not formed until 1968 and it was only recently that I was advised

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that sums of nearly \$2,000,000.00 were being contributed to UWP, a corporation that admittedly seeks to disassociate itself from the teachings of Dr. Buchman and the purposes of MRA. One of the first changes that I noticed was the New York Times article of August 10, 1970 (See Exhibit "F."). Before bringing litigation against MRA and various people associated with it that I then respected, I thought it prudent to wait for further information. The review of I. R. S. form 990 of MRA for 1970 in part substantiated my then-growing suspicions that huge amounts of money were being diverted to UWP and not being applied to furthering the goals of Dr. Buchman. I received this information in 1972 and directed the institution of this action shortly thereafter. It should be noted at this juncture that when I made my contribution to the Life Income Fund, those associated with the moral re-armament movement, including Messrs. Birdsall and Belk, were living literally on faith and prayer without any stated salary.

For what it is worth, my contribution to the Life Income Fund was made to the New York corporation and not the organization in Holland by virtue of the fact that the Holland organization did not have such a fund and I wished to continue to receive during my lifetime the income from my contribution.

(5) and (6): I do not have any personal knowledge of the facts incident to the litigation referred to by Mr. Birdsall. The affidavit of Thomas F. Tivnan submitted herewith will respond to the assertions of both Defendants concerning that suit and the maintenance of this litigation as a class action. However, any assertion that I am not bringing this action in good faith certainly raises a triable issue of fact that requires a denial of this motion.

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FUNCTIONS OF MORAL RE-ARMAMENT INC.

7. From pages 6 through 9, the Birdsall affidavit attempts to review the historical background of MRA in an effort to persuade this Court that the vast contributions it has made are within the scope of its corporate charter. Taking the language of the Charter out of context, Mr. Birdsall, at page 7. of his affidavit, states that certain mediums such as songs, music, etc. can be used:

" * * * to disseminate Christian *teachings* (i. e. brotherhood, tolerance, morality, irrespective of race, creed or national origin):

This language in parentheses cannot be found anywhere in the certificates of incorporation of MRA or UWP.

8. Dr. Buchman cannot be quoted as having said that his aim was solely the promotion of a broad and liberal education of youth.⁸ That is the present aim and goal of UWP and such conduct clearly does not coincide with the concepts of the moral re-armament movement. While the moral re-armament movement is not narrow in its tenets, it is quite definite: *absolute honesty, purity, unselfishness and love, a change of heart, the guidance of God, with the aim of remaking the world.*⁹

9. Mr. Birdsall is quite inaccurate when he states:

"Under the wide powers vested in it, MRA ever since its organization carried on a variety of functions whose aim was to promote better understanding and good will among all people and the education of youth." (Birdsall affidavit, p. 8.)

⁸Birdsall affidavit, p. 7.

⁹See "Remaking The World."

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As he well knows, the aim of MRA, until the establishment of UWP, was to change men and change nations, far more definite aims in practice than the idealism expressed by Mr. Birdsall.

10. The reference by Mr. Birdsall to certain meetings with union leaders and management heads to avert strikes graphically illustrates his gross misconception of the purposes of moral re-armament. As Dr. Buchman probably would summarize it with respect to this particular problem, moral re-armament is not pro-labor or pro-management, but pro-change for everyone. An illuminating illustration of this fact is the continuing efforts of the moral re-armament movement in Europe to bring peace to the violence in Northern Ireland. Attached hereto, made a part hereof and labelled Exhibit "H" are two articles of March 17 and 19, 1973 from the Cincinnati Enquirer pertaining to those efforts as arranged by the true moral re-armament movement. Both articles place great emphasis on the aspect of changing men.

11. At page 10 of his affidavit, Mr. Birdsall refers to a letter received from my then attorneys and he quotes a portion of this letter.¹⁰ This Exhibit concludes by stating:

"Our client understands that the property is being held in the custody of Kidder, Peabody and Company. On her behalf, we request that a statement of the income earned by the fund since it was transferred in 1965 be provided her. If the contribution made by our client is kept in a separate account for her, we would also request that a state-

¹⁰See Exhibit "D" to Birdsall affidavit.

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ment of the assets and their values be set forth either for the quarter last ended, September 30, 1970, or for the period ended December 31, 1969."

What relevance this letter has to this proceeding is somewhat of a mystery inasmuch as an accounting, as requested, was rendered and I have always received the income in accordance with the terms of the two life income agreements. As Mr. Birdsall must be aware since he summarizes them in the beginning of his affidavit, the purposes of this action is to prevent any further transfers of money from the Life Income Fund by MRA to UWP. There has not been asserted at any time by me any claim as to my income or the misuse thereof.

FUNCTIONS OF UP WITH PEOPLE INCORPORATED:

12. Mr. Birdsall, page 12 through 15 of his affidavit, details the extensive activities of UWP in an effort to bring them within the confines of the language of the certificate of incorporation of MRA. However, while these activities of UWP are laudable, they do not fall within the expressed language of the certificate of incorporation of MRA and, moreover, they do not fall within the confines of the moral re-armament movement as defined by Dr. Buehman. Indeed, at page 14 and 15 of his affidavit, Mr. Birdsall states:

"UWP is being financially supported half from tuition paid by the students in UWP educational programs, receipts from the sale of books and records and receipts from performances (where not given charitably) while the other half is derived from contributions from corporations, individuals, foundations. UWP hopes to secure additional funds

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in the future so that it may enlarge its Scholarship Fund available for needy and worthy students. *It is not depending upon such support coming from MRA. Of course UWP hopes that MRA will continue its support in the future as it has done in the past.* But there is no assurance that when the funds contributed by plaintiff vest in MRA upon the death of plaintiff sometime in the future, the funds will then be used to support UWP in its activities." (Italics added.)

Mr. Birdsall would lead this Court to believe that UWP has always been a separate enterprise distinct from that of MRA. This disassociation in fact only involved a moving by its officers from the office of MRA to the office of UWP.¹¹ As is indicated in the complaint in this action and the 1970 IRS form 990 of MRA, UWP has received great and substantial sums of money from MRA since its founding. These funds have not been devoted to the purposes set forth in the certificate of incorporation of MRA and, further, they have not been devoted to the purposes of the moral re-armament movement as founded by Dr. Buchman. As I have previously indicated in this affidavit, the certificate of incorporation of MRA is specific as to its relevance to the principles of Dr. Buchman. The activities of UWP, as graciously outlined by Mr. Birdsall, certainly do not fall within the purview of the tenets of Dr. Buchman. This lawsuit has been instituted to prevent any further disposition of funds directed to the Life Income Fund of MRA to purposes other than those established by Dr. Buchman.

¹¹Both Mr. Belk and Mr. Birdsall were on the Board of Directors of MRA prior to the incorporation of UWP in 1968.

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13. Mr. Birdsall further contends that notwithstanding my contribution of \$50,000 to the Life Income Fund of MRA, I do not have any valid right to complain and insist that my judgment be substituted for that of the directors of MRA. As I have previously indicated in this affidavit, I made a contribution in the sum of \$50,000.00 to the Life Income Fund in order to see that the work of Dr. Buchman would be furthered subsequent to my death. The terms and conditions of the two agreements with respect to the foregoing are clear.¹² I am advised by my attorneys that I have a continuing interest in the aforesaid contribution and the clear right to insist that the money be applied to the purposes set forth in the certificate of incorporation of MRA subsequent to my death. I do not intend to substitute my judgment for that of the directors of MRA. I do intend to use every legal remedy available to me to prohibit MRA from applying my contribution and the contributions of the members of the class to purposes that do not coincide with the teachings of Dr. Buchman and the moral re-armament movement.

14. In summary, the affidavit of Mr. Birdsall in support of this motion for summary judgment in and of itself raises clear triable issues of fact which will require a trial of this lawsuit. The question has arisen as to the propriety of MRA's transferring of large and substantial sums of money to UWP, an organization that does not have any connection with the moral re-armament movement and has expressly disassociated itself from MRA.

¹²See Exhibits "A" and "B" to the complaint herein.

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THE MOTION OF UWP: The Affidavit of Henry L. Bayles

15. I have reviewed the affidavit of Henry L. Bayles, counsel for UWP. For the most part, this affidavit is devoted to assertions that coincide with those of Mr. Birdsall. I have previously refuted these assertions in the foregoing portion of this affidavit. In summary, I have never consented to the application and transfer of monies from the Life Income Fund of MRA to any organization that did not seek to further the teachings of Dr. Buchman. Moreover, I have brought this action expeditiously after learning that such large and substantial contributions were being made by MRA to UWP so as to protect the contributions made by the class and myself to the Life Income Fund.

16. Since I am not an attorney, I believe any further comment with respect to the affidavit of Mr. Bayles would be of little value to this Court. The balance of his assertions pertain to technical legal points. They will be discussed and refuted in the affidavit of Thomas F. Tivnan submitted herewith.

THE MOTION OF MRA: The Affidavit of George A. Vondermuhll, Jr.

17. While the contents of Mr. Vondermuhll's affidavit raise points heretofore covered in the Birdsall affidavit, I will consider it also on an ad seriatim basis.

18. Paragraphs "1." through "4." of the Vondermuhll affidavit provide this Court with some background material as to the nature of this proceeding. Paragraph "5." seeks to persuade this Court that I am endeavoring to mislead it by not quoting or inaccurately quoting a por-

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tion of the certificate of incorporation of MRA. Needless to say, I have set forth at page 3. and 4. of this affidavit considerably more of that certificate than that quoted by Mr. Vondermuhll. Accordingly, I have neither quoted an incomplete or inaccurate portion of the charter. In this context, I respectfully refer this Court to the certificate of incorporation of UWP, which in part states:

“(a) The specific activity in which the corporation is primarily to engage is the organization, co-ordination and education of individuals and groups with a view toward developing leadership, responsibility and understanding among individuals, races, classes, cultures and nations.” (See Exhibit “C”)

Where is there contained in the foregoing any reference to: “Christian revolution”, “new social order” “remaking the world” “Spiritual recovery”, “a return to simple home truths” “unselfishness and love”, “a change of heart” “MRA means honesty, purity, unselfishness and love—absolutely, personally and nationally”, quoted by Mr. Vondermuhll on pages 4 through 7 of his affidavit? The answer is clearly apparent: there is none due to the fact that UWP has absolutely nothing to do with the teaching and principles of “* * * Oxford Group and First Century Christian Fellowship, founded by Frank Nathan Daniel Buchman, and its program of Moral Re-armament, whose aim is personal, social, racial and supernational salvation.” (See Article 2, subparagraph A of the certificate of incorporation of MRA.)

19. Mr. Vondermuhll has quoted at length from Dr. Buchman’s book, “Remaking the World” previously referred to herein. Indeed, according to Mr. Vondermuhll,

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the means and principles of MRA are especially well represented in this book. However, his reference to p. 173 is a glaring example of taking a portion of the book out of context. As Mr. Vondermuhll has quoted:

"Moral Re-Armament creates the qualities that make democracy function. It is simple, non-partisan, non-sectarian, non-political. *It gives to every man* the inner discipline he needs and the inner liberty he desires." (Vondermuhll affidavit, p. 6: Italics added.)

Clearly, Mr. Vondermuhll is in error when he asserts at page "13." that the moral re-armament movement is to be focused on Youth. It is clearly a movement for all ages and, as set forth in its corporate charter, it is devoted to personal, social, racial, national and supernational salvation. This is drastically different from the express purposes of UWP.

20. Mr. Vondermuhll belabors this Court with a rendition of the activities of MRA and the writings and teachings of Dr. Buchman.¹³ *However, what he neglects to mention is that virtually all of this conduct was undertaken by MRA prior to the incorporation of UWP on July 23, 1968.* Prior to that date MRA conducted activities of that nature in an effort to disseminate the teachings of Dr. Buchman. Subsequently, the efforts of MRA and, moreover, much of its funds have been applied to furthering the goals of UWP.

21. Again, the attention of this Court is respectfully directed to the certificate of incorporation of UWP. A comprehensive reading of the provisions of this charter,

¹³Vondermuhll affidavit: paragraphs 7-18.

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clearly illustrates that it does not contain any reference to the teachings and ideals of Dr. Buchman and the moral re-armament movement. Thus, the statement of Mr. Vondermuhll at page 13 of his affidavit is not consonant with the facts.

"I believe that UWP's message, its mobilization of people and the beneficial effects on its young participants all accord with the means and principles of MRA epitomized in "Remaking the World" (see, e. g., "Remaking the World", p. 220; Exhibit Q annexed to Birdsall aff.)."

The purposes of UWP do not concern themselves in any respect with the moral re-armament movement. Indeed, as I have previously indicated in this affidavit, the director of UWP, J. Blanton Belk, has clearly expressed that there is no connection whatsoever between UWP and MRA. However, the connection between the two Defendants is abundantly clear when viewed in the light of the substantial contributions made by MRA to UWP since its incorporation in 1968.

22. Clearly, the affidavit of Mr. Vondermuhll is made with tongue in cheek. He endeavors to persuade this Court to the effect that the principles previously employed by MRA prior to the incorporation of UWP are the same. Therefore, it is argued, there is nothing wrong with MRA contributing vast and substantial sums to UWP which are then applied to purposes other than those of the moral re-armament movement. The fallacy in such an argument is obvious. The purposes of the two Defendants are drastically different.

23. Mr. Vondermuhll makes specific reference to a certain litigation pending in the Supreme Court of the

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State of New York, County of New York, under Index Number 4472/71 entitled "*In the Matter of the Application of Moral Re-Armament, Inc., Petitioner for an injunction pursuant to Sections 133, 135 and 397 of the General Business Law v. The Oxford Group—M.R.A. and Harry Almond, et al.*" The relevance of that said court litigation to that of the case at bar will be fully discussed in the affidavit of Thomas F. Tivnan submitted herewith. I am advised that the assertion of Mr. Vondermuhll contained in paragraph "7." of his affidavit is inaccurate and incorrect insofar as it endeavors to place any judicial interpretation upon the injunction entered in that said court action.

24. The foregoing parts of this affidavit illustrate that the officers and directors of MRA have abandoned the purposes clauses of that corporation by diverting vast and substantial sums of money from those purposes and transferring it to UWP. The contribution that I have made to the Life Income Fund of MRA was made in order to further the principles of the moral re-armament movement as founded by Dr. Buchman. Clearly, unless the officers and directors of MRA are required to apply my contribution to those purposes, I am in grave danger of being financially prejudiced at my death. I believe that unless this Court directs otherwise, the contribution made by me to the Life Income Fund will be applied by MRA to the purposes of UWP. That was not my intention at the time that I made the contribution. I re-

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spectfully submit to this Court that the other members of the class will be placed in similar circumstances unless the injunction requested in the complaint herein is granted.

WHEREFORE, I respectfully request that an order be made and entered herein denying in all respects the motions of Defendants MRA and UWP, and granting to Plaintiff such other and further relief as to this Court may seem just and proper.

(Sworn to by Annelou Teixeria aka Annie Louise Teixeria de Mattos, June 1, 1973.)

**Affidavit of Thomas F. Tivnan in Opposition to Motion
for Summary Judgment Pursuant to F.R.C.P. 56 and
12(b)(6).**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[**SAME TITLE.**]

State of New York,
County of New York, ss:

THOMAS F. TIVNAN, being duly sworn, deposes and says:

1. That I am a member of the firm of Parker, Duryee, Zunino, Malone & Carter, attorneys for Plaintiff in the above entitled action. I am fully familiar with all the facts, pleadings and proceedings heretofore had herein. I respectfully make and submit this affidavit in opposition to the motions of Defendants Moral Re-Armament, Inc. ("MRA") and Up With People Incorporated ("UWP") for summary judgment pursuant to F.R.C.P. 56 and 12(b)(6).
2. I have reviewed the affidavits of Donald P. Birdsall and Henry L. Bayles submitted in support of the motion of UWP and the affidavit of George A. Vondermuhll, Jr. submitted in support of the motion of MRA. I respectfully submit that these affidavits in and of themselves raise clear triable issues of fact that require a plenary hearing in this action. Moreover, the affidavit of Plaintiff raises further triable issues of fact which require a denial of both motions.
3. The affidavit of Henry L. Bayles submitted in support of the motion of UWP contains three separate arguments why this class action should be dismissed at the outset. These three arguments are the legal basis of

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the arguments of both moving Defendants on this motion. They will be considered in order of their appearance in said affidavit.

LACK OF MERIT OF PLAINTIFF'S CLAIM

4. It is asserted by Mr. Bayles that Plaintiff has expressly approved the action of MRA in supporting the efforts of UWP from 1965 to 1968. However, Plaintiff has clearly demonstrated in her opposing affidavit that the efforts of MRA from 1965 until the formation of UWP as a separate corporate entity on July 23, 1968 were devoted to the concepts of the moral re-armament movement and the teachings of Dr. Frank N. D. Buchman, its founder. By strange coincidence, the founding of UWP in 1968 led to a parting of the ways of Plaintiff and MRA. As she indicates in her affidavit, she became completely aware in 1972 that large and substantial sums of money had been diverted by MRA to UWP. It is clear that UWP does not wish to be associated in any respect with the moral re-armament movement, and in particular the statements of the chief executive officer of UWP, J. Blanton Belk, readily discloses that UWP does not desire to have any connection whatsoever with MRA. However, I.R.S. form 990 of MRA for 1970 clearly discloses that MRA contributed nearly \$2,000,000.00 to UWP. It is respectfully submitted that Mr. Belk's disavowance of any connection with MRA is indeed strange in view of the monies received by UWP from MRA.

5. Upon learning of these facts, Plaintiff has timely brought this litigation. Mr. Bayles contends that her action is barred by laches and limitations. However,

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12(b)(6)*

neither UWP nor MRA has filed an answer interposing either of these defenses, and, moreover, no authority as to their respective merit is set forth in his affidavit. It is apparent that at this point in time Plaintiff has timely brought this lawsuit and the question of her good faith in doing so is beyond question. Indeed, the assertion of Mr. Bayles to the effect that this action is not brought by Plaintiff in good faith leads to a sharp question of fact which by and of itself should precipitate a denial of this instant motion.

LACK OF PROPRIETY OF THE CLASS ACTION

6. Initially, it is argued by Mr. Bayles that it was unnecessary for Plaintiff to institute this litigation as a class action. Mr. Bayles states:

"It is submitted that if plaintiff obtained an injunction against the action of which she complains in an independent suit, it would be just as effective as if obtained in a class action, and that there is therefore no real necessity for this class action which seeks the same relief."

The fallacy of this contention is readily apparent. The Plaintiff has made a contribution to the Life Income Fund of MRA. In accordance with the two Life Income Agreements which she signed, she is to receive the income for her life and upon her death the principle of the contribution will vest absolutely in MRA.¹ It is alleged in the complaint that there are a large and substantial number of individuals who have made contributions to the Life

¹See Exhibits "A" and "B" to the complaint herein: Exhibit "A" to the affidavit of Plaintiff.

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Income Fund of MRA and, thus, are members of the class. It is readily apparent that if Plaintiff brought this action in behalf of herself alone, the extent of the injunction would only be for her personal benefit thereby restraining MRA from disposing of her contribution except in a manner consonant with its certificate of incorporation. The other members of the class theoretically would not have any knowledge of the injunction. Accordingly, if they subsequently became aware of the disposition to be made by MRA of their respective contributions upon their deaths, the result would be a multiplicity of litigation each seeking the same redress. Accordingly, the aforesaid statement of Mr. Bayles is not consonant with fact or the law.

PRIOR LITIGATION

7. On or about March 4, 1971, MRA instituted a proceeding pursuant to Sections 133, 135 and 397 against The Oxford Group—M.R.A., a New York Not-For-Profit Corporation, and certain other named individuals who were members of the Board of Trustees of said corporation. This corporation was formed with the consent of the Attorney General of the State of New York and a Justice of the Supreme Court of the State of New York.

8. Subsequent to its incorporation, MRA brought the aforesaid proceeding to enjoin The Oxford Group—M.R.A. from using the name "Moral Re-Armament", "The Oxford Group" or any other similar name. As indicated in the Bayles affidavit, this proceeding concluded with an injunction being entered against The Oxford Group—M.R.A. using the words "Moral Re-Armament", "MRA" or "The Oxford Group" or any similar name as

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part of any of its activities. Attached hereto, made a part hereof and labelled Exhibit "1." is a copy of the injunction judgment. Respondent in that proceeding took an appeal to the Appellate Division, First Department. However, that appeal was subsequently withdrawn pursuant to a stipulation between the parties.

9. The Oxford Group—M.R.A. then proceeded to change its name to Caux Challenge—U.S.A. (hereinafter "Caux") and disseminated a letter to its members discussing the significance of the injunction and its impact upon its corporate activities. Mr. Bayles in his affidavit designates the members of Caux as a "dissident group". The unfortunate designation merely serves to highlight the fact that the members of Caux seek to follow the teachings and goals of the moral re-armament movement, as established by Dr. Buchman, while officers and directors of MRA seek to continue to support an organization which expressly seeks to disassociate itself from MRA and the moral re-armament movement.

10. After the dissemination of the letter of Mitchell Bingham of December, 1971, MRA brought on an application to have Caux adjudged to be in contempt of the injunction by virtue of the dissemination of the letters in question. Caux was adjudged to be in contempt and fined the sum of \$250.00. Thereafter, an appeal was taken from the contempt order to the Appellate Division of the New York Supreme Court in and for the First Judicial Department. The order appealed from was unanimously affirmed without opinion. Caux thereafter unsuccessfully petitioned both the Appellate Division and the Court of Appeals of the State of New York for permis-

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12(b)(6)*

sion to reargue, or in the alternative, for leave to appeal to the Court of Appeals. Both of these motions were denied in all respects.

11. Subsequent to the entry of the aforesaid injunction, MRA instituted an action for an accounting against Caux. Attached hereto, made a part hereof and labelled Exhibit "2." is a copy of the complaint in that accounting action. Caux interposed an answer, served a demand for a bill of particulars and noticed MRA for a deposition. Copies of the pleadings are attached hereto, made a part hereof and labelled Exhibits "3.", "4." and "5.". Upon receipt of the notice of deposition, MRA promptly moved to strike the answer of Caux upon the grounds that same was sham and frivolous, unnecessary and prejudicial and, further, MRA moved for a protective order striking the notice of Defendant to take the deposition of MRA.

12. Pursuant to a memorandum opinion of Mr. Justice Saul S. Streit of the Supreme Court, New York County, the motion of Plaintiff was in all respects denied. Attached hereto, made a part hereof and labelled Exhibit "6." is a copy of the memorandum opinion of Mr. Justice Streit, dated March 30, 1972.

13. The attention of this Court is respectfully directed to the notice of deposition served upon counsel for MRA in that action (See Exhibit "5."). The service of the notice of deposition upon MRA immediately resulted in a request from counsel for MRA that the action be discontinued and counsel for the parties entered into a stipulation discontinuing that action with prejudice and without costs. It is clear that MRA did not then and does not now want any inquiry into its internal financial affairs.

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12(b)(6)*

Thus, that is why both MRA and UWP have brought these instant motions even though faced with such a clear factual issue.

14. It should be readily apparent that Plaintiff in this action is not a member of Caux. It is further apparent that she personally could not make use of any list of contributors to MRA or to its Life Income Fund. She does not have any grievance against MRA for monies contributed to UWP in the past. She is seeking only to protect a substantial contribution that she made to MRA with the understanding that it would be applied toward the furtherance of the moral re-armament movement.

WHEREFORE, I respectfully request that an order be made and entered herein denying in all respects the motions of Defendants MRA and UWP, and granting to Plaintiff such other and further relief as to this Court may seem just and proper, including the costs and disbursements of this action.

(Sworn to by Thomas F. Tivnan, May 23, 1973.)

**Reply Affidavit of Donald P. Birdsall in Support of
Motion for Summary Judgment.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

State of California,
County of Orange, ss:

DONALD P. BIRDSALL, being duly sworn deposes and says that he is Executive Vice-President of defendant, Up With People, Inc., and has read the opposing affidavits and exhibits submitted on behalf of plaintiff in opposition to the motion for summary judgment dismissing the complaint made by Up With People Inc. and a similar motion made by the codefendant, Moral Rearmament Inc.

Deponent respectfully submits that the opposing papers do not serve to create any triable issue as to fundamental matters, and that the moving affidavits and documentary proof clearly show that there is no merit whatsoever to this action.

In this reply affidavit deponent does not believe it necessary to point out the various factual distortions and inaccuracies contained in the opposing papers in an attempt to convince this Court that there is some triable issue for they are directly contradicted by the documentary evidence and by plaintiff's own admissions. In addition, a number of the claims sought to be raised by plaintiff are not at all relevant to a determination of the fundamental matters upon which plaintiff's claim to institute this action is based.

*Reply Affidavit of Donald P. Birdsall in Support of
Motion for Summary Judgment*

However, as a personal matter, deponent would like to comment upon the following statement in plaintiff's opposing affidavit (p. 5):

"Furthermore, Mr. Birdsall's credibility is placed in sharp focus when he describes UWP [Up With People Inc.] as a non-profit corporation. I am led to believe that in 1969 UWP received gross contributions of \$4,274,000 for its fiscal year April 1, 1970 to March 31, 1971 while having expenses of only \$2,224,000."

Even if these figures were accurate, it is inconceivable how plaintiff could reach the wholly illogical and unwarranted conclusion from the figures themselves that UWP does not qualify as a nonprofit corporation in the sense in which deponent has used the description in the moving papers and then using this false premise, attack deponent's credibility.

The certificate of incorporation of UWP (Teixeira, Ex. C; Birdsall, Ex. L) provides that it is organized under the "General Nonprofit Corporation Law of the State of California" (¶III) and paragraph VIII specifically provides that:

"* * * no part of the profits or net income of this corporation shall ever inure to the benefit of any director, officer or member thereof or to the benefit of any private individual. * * *"

After the submission by UWP of a comprehensive application, the Federal Government granted tax exempt status to UWP. (Birdsall, Exs. O, P)

*Reply Affidavit of Donald P. Birdsall in Support of
Motion for Summary Judgment*

Fortunately, the purposes and activities of UWP have appealed to a large number of people, corporations, foundations and firms who have generously made contributions to UWP without which it could not have carried out its activities (see Annual Reports of UWP for the years 1969, 1970, 1971 and 1972 in the file submitted to the Court, copies of which have been served on plaintiff's attorneys). We at UWP hope that MRA will in the future also be included among the contributors but, as indicated in deponent's moving affidavit, UWP is not relying upon future contributions from MRA for the carrying on of its activities.

Every cent received by UWP from contributions as well as any other source is reported and strictly accounted for. (See Annual Reports) All sums received by UWP are solely used to carry on its purposes and activities.

In the Annual Report of UWP for 1971, audited by Arthur Andersen & Co., the "Statement of Income and Expenses" for the year ended March 31, 1971 (page 27) lists total contributions of \$3,143,000 as part of a total income of \$4,274,000, and also lists total expenses of \$2,050,000. Of the total contributions, the sum of \$1,963,000 is listed under "Capital Reserve Accounts."

In this Annual Report, Note 5 to the contributions states (p. 28):

"The majority of the contributions to the Capital Reserve Accounts are in the form of noncash items such as real estate. Inasmuch as these noncash items are not income producing, it is management's intention to convert these noncash items into income producing investments."

*Reply Affidavit of Donald P. Birdsall in Support of
Motion for Summary Judgment*

The fact that UWP during a particular period may have received contributions in excess of its expenses for that period in no way supports plaintiff's wholly unfair and inexcusable charge that UWP does not qualify as a nonprofit corporation or that deponent's "credibility is placed in sharp focus" because deponent has stated that UWP has been and is a nonprofit corporation.

Deponent respectfully submits that the issues sought to be raised by plaintiff in her opposing papers are feigned issues, that the instant action was not instituted in good faith and that the motions by defendants for summary judgment dismissing the complaint should be granted.

(Sworn to by Donald P. Birdsall on July 19, 1973.)

**Defendant M's Reply Affidavit in Support of Motion
for Summary Judgment, etc.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

State of New York,
County of New York, ss:

GEORGE A. VONDERMUHLL, Jr., being duly sworn, deposes and says:

1. As stated in my moving affidavit sworn to April 18, 1973, I am the Secretary and a Director of defendant Moral Re-Armament, Inc. (MRA), and respectfully submit this affidavit in reply to the opposing affidavits of plaintiff and Mr. Tivnan, one of her attorneys.

2. At pages 4-5 of her affidavit plaintiff baldly states:

“Clearly, the purposes of UWP do not pertain in any way to the purposes of MRA such as the advancement of the Christian religion, the concepts of the moral re-armament movement and the teachings of Dr. Buchman. Most importantly, the activities of UWP are utterly unrelated to the concepts of the moral re-armament movement and the teachings of Dr. Buchman. UWP does not seek to spread in the world the teachings of Dr. Buchman or the concepts of moral re-armament.”
(Underscoring by plaintiff)

While this may be plaintiff's own opinion, to which she is entitled, her erroneous opinion does not give rise to any triable issue of fact in this case.

3. I have previously attempted to show in my moving affidavit (see esp. p. 13, para. 17) the relation between

*Defendant MRA's Reply Affidavit in Support of Motion
for Summary Judgment, etc.*

the means and principles of MRA and UWP. In the opinion of MRA's Board of Directors the activities of UWP today, like the similar activities which MRA carried out under the names "Sing-Out" and "Up With People" before the separate incorporation of UWP, continue to advance the purposes of MRA. Therefore, those activities of UWP are certainly proper objects of financial support by MRA under Article 2D(2) of its certificate of incorporation, which empowers MRA:

"(2) To establish and support, or aid in the establishment and support, of any religious, charitable or educational associations or institutions, and to contribute money for religious, charitable or educational purposes in any way connected with the purposes of the corporation or calculated to further its purpose."

4. Although I emphasized in my moving affidavit the Board of Directors' reliance on Article 2A of MRA's charter, I also indicated (p. 14) our agreement with the moving affidavit of Mr. Birdsall of UWP that all the rest of MRA's purposes and powers in Article 2 of the charter give MRA even broader authority. I did not intend to limit our reliance to Article 2A alone.

5. However, I submit that a determination of what constitutes the means and principles of Moral Re-Armament referred to in Article 2A of MRA's charter does not involve any triable issue of fact in this case. In her opposing affidavit plaintiff apparently agrees that the means and principles of Moral Re-Armament are set forth in the book, "Remaking the World", the collected speeches of Dr. Buchman, which is the same view held by MRA's Board of Directors as I pointed out in

*Defendant MRA's Reply Affidavit in Support of Motion
for Summary Judgment, etc.*

my moving affidavit (p. 3, para. 7).* Indeed, both sides have indicated that they will hand up copies of this book to the Court on the return day of these motions. It is respectfully submitted, therefore, that there is no triable issue of fact with regard to the scope of the means and principles of Moral Re-Armament, because both parties are in agreement in this respect.

6. I respectfully submit that the only remaining material issue is whether or not MRA's Board of Directors have the exclusive right in their unfettered discretion to establish the policy and programs of the corporation within the framework of the purposes and powers set forth in its certificate of incorporation. By nothing more than the expression of her opinion as to the nature of the activities of UWP, apparently based only upon dissimilarities in the respective certificates of incorporation, the plaintiff attempts to bring into question this right of MRA's Board of Directors, which my counsel advise me is purely a question of law.

7. In my moving affidavit I have not impugned the good faith of plaintiff, Miss Teixeira, but I am convinced that she has been misled in the institution of this action. As already pointed out by Mr. Bayles, UWP's attorney, in his affidavit in support of UWP's motion (pp. 3-6), the plaintiff's present attorneys, Messrs. Parker, Duryee, Zunino, Malone & Carter, beginning in late 1970, represented a group of people, including former fiduciaries of MRA, and a New York Not-for-Profit corporation

*In the prior litigation, plaintiff's attorneys' other client, Caux Challenge-U.S.A. by Mitchell Bingham, Executive Director, also cited "Remaking the World" as the authoritative source for the principles of Moral Re-Armament (see the yellow-covered Record on Appeal in the Appellate Division, 1st Dept., in Index No. 4472-1971, p. 71, which has been requisitioned from the N. Y. County Clerk).

*Defendant MRA's Reply Affidavit in Support of Motion
for Summary Judgment, etc.*

first named "The Oxford Group—M.R.A." and now known as "Caux Challenge—U.S.A." MRA obtained an injunction in the New York County Supreme Court against that corporation's infringement of MRA's identity, and later had it held in contempt for refusing to obey the injunction. Throughout the injunction and contempt proceedings, and even before the Court of Appeals, these same attorneys argued that MRA by supporting UWP had abandoned its corporate purposes. Yet, at the same time, they advised their clients that because of the breadth of MRA's charter nothing could be done to prevent MRA from supporting UWP (see Exh. A, p. 2, annexed to Bayles affidavit in support of motion by UWP).

8. Annexed to plaintiff's opposing affidavit as Exhibit G is a photocopy of MRA's federal return 990 for the year 1970. Included in this exhibit is a two-page list headed "Contributions \$5,000 and over, line 2, part 1," which shows the names and addresses of major contributors to MRA in 1970 and the amounts of their contributions. I am advised by counsel that the release by Internal Revenue Service of this part of the return containing the names and addresses of contributors was a violation of Section 6104(b) of the Internal Revenue Code. MRA a non private foundation has never authorized the release of such a list to anyone.

9. After being served with plaintiff's opposing affidavit containing this exhibit, MRA's counsel objected to Internal Revenue Service at Philadelphia where the return was filed. Our counsel was thereafter advised by Mr. Joe Connors of that office of Internal Revenue Service that the return with the list of contributors (plaintiff's Exh. G) was furnished in May 1972 to Messrs. Parker,

*Defendant MRA's Reply Affidavit in Support of Motion
for Summary Judgment, etc.*

Duryee, Zunino, Malone & Carter, who had requested it by letter dated April 20, 1972, as attorneys for Caux Challenge—U. S. A. It should be noted that in her opposing affidavit (bottom of p. 9) plaintiff states that she reviewed the return in 1972 and then directed the institution of this action.

10. It is respectfully submitted that plaintiff's attorneys, despite their position in prior litigation that MRA's charter was broad enough to permit it to support UWP (see para. 7, above) have in the present case made a complete about face in order to be in a position to charge MRA with acting outside its corporate powers and purposes by supporting UWP. I agree with UWP's attorney that the main concern of plaintiff's attorneys continues to be the interests and activities of Caux Challenge—U. S. A., and that they are attempting by means of this action to harass MRA and obtain disclosure of its finances and contributors for the benefit of their other clients—something they failed to achieve in the injunction and contempt proceedings which have finally been concluded by order of the Court of Appeals dated May 4, 1973, denying leave to appeal.

11. In her opposing affidavit (p. 18, para. 20) plaintiff admits that prior to the incorporation of UWP in 1968, MRA was acting properly. Also, according to her attorney, "she does not have any grievance against MRA for monies contributed to UWP in the past" (Tivnan aff., p. 7, para. 14). However, throughout her opposing affidavit plaintiff claims that after the incorporation of UWP in 1968, MRA's efforts and much of its funds went to support UWP, implying that MRA has discontinued all its other activities and, thus, e. g., no longer disseminates the teachings of Dr. Buchman. As I stated in my moving affidavit (p. 13, para. 18) MRA continues to explore

*Defendant MRA's Reply Affidavit in Support of Motion
for Summary Judgment, etc.*

new avenues and means to accomplish the purposes set forth in its certificate of incorporation. The incorporation of UWP in 1968 did not cause MRA to cease its other activities and programs, including the circulation of literature and films, and personal conferences and counselling. This fact was clearly stated in MRA's 1968 Annual Report (see Birdsall aff., Exh. K, p. 2).

12. Personal contact and counselling have always been fundamental to the work of Moral Re-Armament, and a major part of every program. At the latest Directors' meeting held April 16, 1973, in New York City, the Directors agreed to increase efforts in the area of personal contact and counselling as a major activity of MRA. Annexed is a certificate containing an extract from the corporate minutes about this activity which, incidentally, directly involves the constant efforts of directors, officers, staff members and volunteers of MRA in all parts of the country. At the same meeting the Directors were unanimous in their resolve to continue the work of Moral Re-Armament as vigorously as ever.

13. I am advised by counsel that plaintiff's jury demand set forth on the face of her complaint is inappropriate in this action for injunction, which is traditionally equitable in nature.

14. In conclusion, I would like to emphasize the point I made in my moving affidavit (p. 3, para. 8) that after spending most of my life in the work of Moral Re-Armament, I cannot give one all-encompassing definition of it, and I respectfully submit that neither can the plaintiff do so.

*Defendant MRA's Reply Affidavit in Support of Motion
for Summary Judgment, etc.*

Wherefore, your deponent respectfully requests that an order be made striking out the plaintiff's complaint for failure to state a claim upon which relief may be granted, and directing summary judgment in favor of defendants; directing the plaintiff to disclose how she obtained the list of contributors in violation of Internal Revenue Code Section 6104(b), and to turn over said list to defendant MRA, and to disclose what use she or her attorneys have made of said list, if any, including communications with said contributors or third parties, and expunging said list from the Court file; striking plaintiff's demand for jury trial, and for such other and further relief as the Court deems just and proper, together with costs and disbursements.

(Sworn to by George A. Vondermuhl, Jr. on July 26, 1973.)

**Supplemental Affidavit of George A. Vondermuhll, Jr.,
in Support of Motion for Summary Judgment, etc.
(MRA).**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

State of New York,
County of New York, ss:

GEORGE A. VONDERMUHLL, Jr., being duly sworn, deposes and says:

1. Your deponent was present in Court at the argument of the defendants' motions for summary judgment on July 27, 1973. In response to the Court's question to me whether I knew of any six-figure contributions that MRA had made in the past to organizations other than UWP, I informed the Court that I recalled that MRA contributed several million dollars towards the establishment and support of Mackinac College in Michigan. I also told the Court that I was not sure what other large gifts the corporation might have made before I became an officer.

2. When I returned to my office I examined the records, which indicate that in past years MRA has made the following gifts in excess of \$100,000 to organizations other than UWP, amounting to more than \$12,000,000. (Numerous gifts of less than six figures are not included, except where indicated.)

(a) The establishment in 1961 and support of a non-profit Michigan Corporation, The Oxford Group—Moral Re-Armament, MRA of Michigan, Inc.

*Supplemental Affidavit of George A. Vondermuhll, Jr.,
in Support of Motion for Summary Judgment, etc.
(MRA)*

1961—Land, buildings & equipment
 @ book value \$6,195,000 plus
 \$25,000 cash
1962—\$491,000
1963— 523,000
1964— 372,000
1965— 340,000

(b) The establishment in 1965 and direct support of Mackinac College, a four-year liberal arts college at Mackinac Island, Michigan, chartered by that State's Department of Education. (See MRA 1965 Annual Report, p. 13.)

1965—\$208,000.

In addition, the Michigan Corporation (para. [a] above) gave more than \$6,000,000 in land, buildings and equipment, with the approval of MRA which controlled that corporation.

(c) The establishment and direct support of a non-profit California corporation, Bear Creek Ranch, Inc., as a youth training center. (See MRA 1967 Annual Report, p. 25.)

1967—\$205,000.

(d) The establishment in 1968 of a non-profit California corporation, Pace Programs, Inc., to take over from MRA the publication of "Pace", a pictorial magazine originally launched by MRA in 1964, whose purpose was to heighten the aims and concerns of young Americans. It became an award-winning magazine with a paid circulation of more than 100,000 copies a month. (See MRA 1967 Annual Report, p. 23.)

1970—\$326,000, plus cancellation of note for \$1,369,000.

*Supplemental Affidavit of George A. Vondermuhll, Jr.,
in Support of Motion for Summary Judgment, etc.
(MRA)*

(e) Aid in the establishment and support of Moral Re-Armament activities, organizations, and facilities in foreign countries in a multiplicity of ways according to circumstances and the laws and customs of the respective countries. Major examples would be donations in cash, kind, services, transportation, etc., to the Moral Re-Armament Conference Center at Caux, Switzerland; to the Westminster Theatre, a Moral Re-Armament-oriented theater in London, and to other activities in Britain; to Moral Re-Armament centers in Tokyo and Odawara, Japan, and activities in that country; and to organizations, facilities and activities in such other countries as Argentina, Brazil, Canada, Congo, Cyprus, Finland, France, West Germany, India, Kenya, Lebanon, Nigeria, Philippines, etc. Direct contributions to and for such foreign organizations and their activities, which were also substantial in earlier years, total as follows for a typical decade. (These amounts also include gifts of less than six figures.)

1959—\$112,000

1960— 195,000

1961— 461,000

1962— 178,000

1963— 77,000

1964— 110,000

1965— 197,000

1966— 211,000

1967— 185,000

1968— 251,000

Total \$1,977,000

(Sworn to by George A. Vondermuhll, Jr., August 2, 1973.)

**Plaintiff's Statement of Facts Pursuant to Rule 9(g),
General Rules.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

**Statement of Material Facts Indicating the Existence of
Triable Issues of Fact in the Case at Bar**

1. This is an action for a permanent injunction. The complaint herein contains the claim which seeks to enjoin the Defendant Moral Re-Armament, Inc. ("MRA") from contributing to Defendant Up With People Incorporated ("UWP") funds from its Life Income Fund.
2. On or about August 4, 1965, Plaintiff entered into two Life Income Agreements with MRA pursuant to which she contributed the sum of \$50,000 to the Life Income Fund of MRA. The two agreements are appended as Exhibits "A" and "B" to the complaint herein.
3. Subsequent to making the contribution and on or about July 23, 1968 UWP was incorporated under the laws of the state of California. Its corporate purposes and activities are substantially different from those of MRA.
4. In or about the year 1972, Plaintiff became aware that MRA had contributed nearly \$2,000,000 to UWP in 1970 and other vast and substantial sums to UWP in 1968 and 1969. At this time, Plaintiff was also aware that the activities and conduct of UWP were not in any way similar to those of MRA.
5. MRA was incorporated in 1941 and is alleged to be a nonprofit corporation. Its certificate of incorporation

*Plaintiff's Statement of Facts Pursuant to Rule 9(g),
General Rules*

provides that its specific purpose is the advancement of the Christian Religion and in particular by furthering the aims and teachings of The Oxford Group and the First Century Christian Fellowship founded by the late Dr. Frank N. D. Buchman.

6. The Life Income Agreements executed by Plaintiff provide that she will receive the income derived from the investments of her contribution by the custodian of the Life Income Fund, Defendant Kidder, Peabody and Company. Upon her death the contribution passes outright to MRA. Plaintiff seeks to enjoin MRA from contributing any further sums to UWP since its activities and purposes do not coincide with the tenets and teachings of the late Dr. Buchman and his moral re-armament movement, said teachings and tenets being specifically named in the certificate of incorporation of MRA.

7. The action is brought as a class action inasmuch as there are substantial individuals in the same circumstances as Plaintiff. The maintenance of this class action will prohibit the institution of multiple litigation in the future designed to seek the same relief as is now being sought by Plaintiff.

Dated: New York, New York
June 1, 1973

PARKER, DURYEE, ZUNINO, MALONE
& CARTER

By _____
A Member of the Firm
Attorneys for Plaintiff
Office and P. O. Address
1 East 44th Street
New York, New York 10017

Defendant MRA's Rule 9(g) Statement.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

**Material Facts as to Which Defendant MRA Contends
There is no Genuine Issue to be Tried.**

1. MRA is a New York non-profit corporation, incorporated under the New York Membership Corporations Law. After its repeal, MRA is subject to the New York Not-for-Profit Corporation Law. Its purposes are religious, charitable and educational.
2. Plaintiff contributed \$50,000 in 1965 to MRA's Life Income Fund, and has duly received all her income therefrom.
3. UWP is a California non-profit corporation, whose purposes are charitable and educational.
4. The principles of Moral Re-Armament (also known as The Oxford Group and MRA) are set forth in the book, "Remaking the World", the collected speeches of Dr. Frank N. D. Buckman.
5. In 1968, 1969 and 1970 MRA contributed substantial sums to UWP.
6. The donation of said sums to UWP by MRA was the result of the exercise of the honest, unbiased judgment of the Board of Directors of MRA, who deemed their action as proper and effective means to further and advance the purposes of MRA as well as being calculated

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Defendant MRA's Rule 9(g) Statement

to further and advance said purposes, all in accordance with the certificate of incorporation of MRA.

Dated: New York, N. Y.
July 26, 1973.

WASHBURN & GRAY
Attorneys for Defendant MRA
Office & P. O. Address
36 West 44th Street
New York, N. Y. 10036
(212) MU 2-4025

By ROBERT L. TUTTLE
Associate Attorney

Opinion and Judgment Appealed From.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

BAUMAN, D. J.:

Plaintiff, Annelou Teixeira, commenced this diversity action on her own behalf and on behalf of all other individuals who have contributed to the Life Income Fund of Moral Re-Armament, Inc. (hereinafter referred to as "MRA"). She seeks to enjoin MRA from disbursing any Life Income Fund monies in any manner which does not further the purposes and goals of MRA, as set forth in its Certificate of Incorporation, and further seeks to enjoin Up With People, Inc. (hereinafter "UWP") from accepting any contributions emanating from that Fund. Kidder, Peabody and Company (hereinafter "Kidder"), whose involvement arises solely from its position as MRA's investment advisor and custodian of the Life Income Fund, is likewise named as a defendant.

A plethora of motions are now before the court, but they will best be understood against the factual background.

I.

In August, 1965, plaintiff entered into two Life Income Agreements (hereinafter the "Agreements") with MRA, a New York nonprofit corporation, pursuant to which she irrevocably contributed \$50,000. These Agreements specified that her contribution would repose in the Moral Re-Armament Investment Fund, of which Kidder was the custodian; that the money was to be invested for her

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benefit; and that she was to receive all resulting income during her lifetime. It seems utterly clear that the transfer of title to the money took place upon delivery and that her only retained right was to receive any income derived from the investment of the funds. Plaintiff contends, however, that prior to the execution of the Agreements by herself, as well as others in her class, MRA had represented (presumably orally) that such contributions would be used and employed toward attainment of the goals and purposes reflected in its Certificate of Incorporation. She urges that she relied upon these representations in concluding the transactions.

MRA was incorporated in 1941 as a nonprofit corporation under the New York Membership Corporation Law.¹ Its purposes are set out in its Certificate of Incorporation as follows:

“A. The *advancement of the Christian religion*, and in particular by the means and in accordance with the principles of The Oxford Group and First Century Christian Fellowship, founded by Frank Nathan and Daniel Buchman, and its program of Moral Re-Armament, *whose aim is personal, social, racial, national and supernational salvation*.

“B. To *disseminate Christian teachings* among the people of the United States and other countries by means of the preparation, publication and circulation of magazines, pamphlets, books, songs, music and other writings, or by means of radio or television broadcasters, or the use of sound or motion picture films.

“C. To engage in one or more activities of a *religious, charitable or educational nature* which may be necessary or proper to carry out said purposes or objects.” [Emphasis added]

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To achieve these ends it is specifically empowered:

"To establish and support, or aid in the establishment and support, of any religious, charitable or educational associations or institutions, and to contribute money for religious, charitable or educational purposes in any way connected with the purposes of the corporation or calculated to further its purpose."

At about the time of plaintiff's contribution, MRA began a series of musical programs characterized as "sing outs" by the parties. By 1968 the directors of MRA had decided that the sing-out programs, entitled "Up With People" should be separately organized and incorporated and this was done pursuant to the General Nonprofit Corporation Law of the State of California.² In the years following MRA made substantial contributions to UWP; in 1970 alone they exceeded 1.7 million dollars.³

Plaintiff now sues to enjoin any future contributions from the assets of the Life Income Fund. The action is premised on MRA's alleged failure to limit its contributions to institutions sharing, or at least furthering, its goals and purposes and upon plaintiff's more specific contention that UWP is not a proper beneficiary. Her argument proceeds as follows: Unless this court directs otherwise, her contributions will be applied by MRA to the purposes of UWP upon her death. This, she continues, would constitute conduct in derogation of MRA's oral representations to her and members of her class, and *ultra vires* under its Certificate of Incorporation.

II.

Defendants contend that this action is not properly maintainable as a class action under Rule 23 of the

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Federal Rules of Civil Procedure. It hardly need be pointed out that in order to maintain such a class action, plaintiff must sustain the burden of showing that the four prerequisites of 23(a) are satisfied.* *DeMarco v. Edens*, 390 F. 2d 836 (2d Cir. 1968); *Free World Foreign Cars, Inc., v. Alfa Romeo*, 55 F.R.D. 26 (S.D.N.Y. 1972); *Kinzler v. New York Stock Exchange*, 53 F.R.D. 75 (S.D.N.Y. 1971). Nor is the burden met by a mere recital of the language of the Rule and a naked assertion that the case before the court satisfies its requirements. *Gillibeau v. City of Richmond*, 417 F. 2d 426 (9th Cir. 1969); *Wolfson v. Solomon*, 54 F.R.D. 584 (S.D.N.Y. 1972); *Kinzler v. New York Stock Exchange*, *supra*.

The very first of Rule 23(a)'s four prerequisites mandates that the class be so numerous that joinder of all its members is impractical. Plaintiff asserts that her class consists of all those who entered into Life Income Agreements with defendant, MRA, and that "the class is so numerous that joinder of all members is impracticable." The basis for this conclusion is, however, nowhere revealed and none of the material before the court furnishes a foundation for such a determination. By way of example, there is not the slightest suggestion as to the number of individuals who have, in fact, entered into such agreements.

Our Court of Appeals was faced with a similar situation in *DeMarco v. Edens*, 390 F. 2d 836 (2d Cir. 1968). In language strikingly applicable to the case at bar, it held:

"Without deciding whether appellants have failed to prove that a class actually exists, we hold that these actions were not properly maintainable as class actions because appellants did not show that the members of the alleged class are so numerous

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as to make it impracticable to bring them all before the court. What evidence there is in the record as to the size of the 'class' and the impracticability of joinder is pure speculation. . . . Furthermore it is fundamental that those seeking to maintain an action as a class action must make a positive showing that it would be impracticable to deny the prayer." 390 F. 2d at 845.

The motion papers not only fail completely to make such a "positive showing" but are, in fact, devoid even of an offer to do so. See, *Wolfson v. Solomon, supra*; *Cannon v. Texas Gulf Sulphur Co.*, 53 F.R.D. 216 (S.D.N.Y. 1971).

In light of plaintiff's failure to meet this threshold requirement, I need not further consider the satisfaction of the remaining requirements of Rule 23(a) and I necessarily conclude that this action is not maintainable as a class action.

III.

Both MRA and UWP⁵ have moved separately for "an order pursuant to FRCP 12(b)(6) and 56 granting summary judgment in favor of defendants and dismissing the complaint." These motions lend themselves to clearer disposition when considered separately.

(i) MRA's Motion for Summary Judgment

It probably no longer needs to be said that summary judgment will not be granted if there is a genuine dispute between the parties as to any material issue of fact. *Sartor v. Arkansas Natural Gas Corp.*, 321 U. S. 620 (1944); *United States v. Diebold, Inc.*, 369 U. S. 654 (1962); *Empire Electronics v. United States*, 311 F. 2d

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175 (2d Cir. 1962). Likewise, it is settled that the burden of proof rests on the movant, and it is a heavy one. *Poller v. Columbia Broadcasting*, 368 U. S. 464 (1962); *First National Bank of Cincinnati v. Pepper*, 454 F. 2d 626 (2d Cir. 1972). Because it is a drastic remedy our Court of Appeals has on several occasions reminded the District Courts that it is not to be lightly granted. *Colby v. Klune*, 178 F. 2d 872 (2d Cir. 1949). See also *Schoenbaum v. Firstbrook*, 405 F. 2d 215 (2d Cir. 1968); *Kern v. Hettinger*, 303 F. 2d 333 (2d Cir. 1962); *Bromberg v. Moul*, 275 F. 2d 574 (2d Cir. 1960); *Alvado v. General Motors*, 229 F. 2d 408 (2d Cir. 1956).⁷

After having carefully considered the affidavits and pleadings before me, I conclude that the motion by MRA must be denied.

Both MRA and plaintiff agree that MRA has made substantial contributions to UWP. However, a clear factual dispute exists as to whether these accorded with its goals and purposes.⁸

UWP is exclusively a charitable and educational corporation. Its Articles of Incorporation set as its goal the development of understanding among individuals, races, classes, cultures and nations." This, plaintiff suggests, does not "pertain in any way to the purposes of MRA such as the advancement of the Christian religion, the concepts of the moral re-armament movement and the teaching of Dr. Buchman." (Affidavit of Anne Louise Teixeira pp. 4-5).

Defendant MRA, however, contends that contributions to such an organization are indeed in furtherance of Christian teachings and the ideas of Dr. Buchman. (Affidavit of George Vondermuhl, Secretary and a Director of MRA). The mere statement of the opposing positions present me with a conflict that cannot be resolved short of a trial. Summary judgment is therefore inappropriate.

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MRA's reliance on the "business judgment rule" to protect the actions of management is misplaced. That "rule" is designed to afford officers and directors of a corporation a measure of protection from a stockholder seeking to second-guess their management decisions. What is at issue here is the enforcement of a specific *promise* by MRA to utilize the funds arising out of the Life Income Agreement in a specific manner. The "business judgment rule" has no place in such a discussion.

Additionally, the question of laches presents a factual dispute of some consequence. Laches is an equitable doctrine and will be applied where it would be inequitable to permit plaintiffs to proceed. *Holmberg v. Armbrecht*, 327 U. S. 392 (1946); *Office of Supply Government of Republic of Korea v. New York Nav. Co., Inc.*, 469 F. 2d 377 (2d Cir. 1972). Its effect in barring an action depends on the circumstances of the case. *Burnett v. New York Central Railroad Co.*, 380 U. S. 424 (1965). While lapse of time or delay in enforcing one's rights is not the only element of laches, it is surely one of the most important. *Russell v. Todd*, 309 U. S. 280 (1940); *Edward B. Marks Music Corp. v. Charles K. Harris Music Pub. Co.*, 255 F. 2d 518 (2d Cir. 1958), cert. denied 358 U. S. 831 (1958).

Plaintiff contends that she has just now become aware of MRA's substantial financial contributions to UWP. MRA, on the other hand, contends that plaintiff has known of them for close to eight years and the doctrine of laches is peculiarly applicable. Where the truth lies cannot be determined on the basis of the affidavits submitted. Credibility is at issue and can only be resolved by the taking of testimony.

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(ii) UWP's Motion for Summary Judgment

A different result must obtain as to UWP's motion for summary judgment. Nothing before the court supports in any way a cause of action against UWP. Indeed under any of the possible theories upon which plaintiff's case may rest [i. e. breach of fiduciary duty, deceit, or fraud in the inducement] UWP would not be culpable. Surely it owes no fiduciary duty to plaintiff. She is not a member of, nor a contributor to the organization. None of plaintiff's money is in UWP's possession. Furthermore, since its corporate existence only dates back to 1968, UWP was neither a formal party to the Life Income Agreement nor a participant in any alleged fraudulent inducement. Finally, there is no allegation that UWP acted, or threatens to act in the future, as a co-conspirator, aider or abettor or in any other improper manner. Its Articles of Incorporation grant it the power to accept charitable contributions. Plaintiff has accused it of doing no more.

Any factual disputes which may exist between UWP and plaintiff are immaterial. The showing of a "genuine issue for trial" is predicated upon the existence of a legal theory which remains viable under the asserted version of the facts. *Bushio v. Stenocord Corp.*, 460 F. 2d 116 (9th Cir. 1972). It is not enough for the party opposing the motion for summary judgment to point to disputes of fact. The facts in issue must be material and have legal significance. *Applegate v. Top Associates Inc.*, 425 F. 2d 92 (2d Cir. 1970); *Kiess v. Eason*, 442 F. 2d 712 (7th Cir. 1971). If the pleadings and affidavits disclose that no real cause of action exists, the court may determine that there is no issue to be tried and may grant a summary judgment. *Mintz v. Mathers Fund*, 463 F. 2d 495 (7th Cir. 1972); *In re*

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Antibiotic Antitrust Actions, 333 F. Supp. 310 (S.D.N.Y. 1971).

Upon that basis, then, UWP's motion for a summary is granted. It should be noted that plaintiff is in no way harmed by this decision. Should it obtain its requested injunctive relief against MRA, further relief against UWP would be superfluous. The injunction sought would bind all MRA's officers, directors, employees, agents, attorneys and anyone acting on its behalf. That, it seems to me, would suffice.

IV.

The remaining questions raised by the parties are without merit. No more than a sentence or two is warranted on each.

Plaintiff demands a trial by jury, a demand which defendants oppose. This being an action in equity seeking only injunctive relief no such right exists. The Seventh Amendment granting a right to jury trial is applicable only to actions at law. *United States v. Louisiana*, 339 U. S. 699 (1950); *Damsky v. Zaratt*, 289 F. 2d 46 (2d Cir. 1961). The motion for trial by jury is denied.

Similarly, MRA's motion under Federal Rule 43 for an order directing plaintiff to disclose how she obtained the list of MRA contributors is inappropriate. Rule 43 deals with the taking of evidence at trial and has no application here.

V.

The papers before me badly neglect two matters of vital importance to the maintainance of this action.

The first concerns the propriety of injunctive relief.

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Plaintiff's bare assertion that she does not have an adequate remedy at law is not altogether convincing. Indeed, her apparent lack of interest in the return of her money may be regarded as undermining her claims of irreparable harm and inadequate remedies at law. The burden of proof of such inadequacy rests on the plaintiff; the absence of such a remedy must be clearly disclosed by the evidence. *Beacon Theaters, Inc. v. Westover*, 359 U. S. 500 (1959); *United States v. Maidman*, 340 F. Supp. 395 (S.D.N.Y. 1971); *Penn Central Co. v. Buckley & Co.*, 293 F. Supp. 653 (D.N.J. 1968); *aff'd* 415 F. 2d 762 (3d Cir. 1969).

The second concerns the question of plaintiff's standing. The general rule in New York appears to be that gifts to charitable corporations for stated purposes are enforceable at the instance of the Attorney General. *St. Joseph's Hospital v. Bennett*, 281 N. Y. 115 (1939); *Grace v. Carroll*, 219 F. Supp. 270 (S.D.N.Y. 1963). Equity will afford protection to a donor to a charitable corporation in that the Attorney General may maintain a suit to compel the property to be held for the charitable purpose for which it was given. *St. Joseph's Hospital v. Bennett*, *supra*. Whether the Attorney General is the sole person entitled to bring such an action is a question of great consequence to the case at bar.¹⁰

Appropriate additional motions addressing themselves to these two issues are invited.¹¹

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Conclusion

Plaintiff's action is not maintainable as a class action. MRA's motion for summary judgment is denied. UWP's motion for summary judgment is granted. Demand for jury trial denied.

So Ordered.

Dated: February 25, 1974

s/ ARNOLD BAUMAN
U. S. D. J.

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FOOTNOTES

¹The Membership Corporation Law was subsequently superseded by New York Not-For-Profit Corporation Law.

²The purposes clause of the Articles of Incorporation indicates that the corporation was formed for "exclusively charitable and educational purposes." It makes no mention of "religious aims."

³None of this money is alleged, however, to have come out of plaintiff's contribution. Furthermore, it is unclear from the record whether any contributions from Life Income Agreements were utilized for this purpose.

⁴Rule 23(a) of the Federal Rules of Civil Procedure provides:

"(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class."

⁵Kidder has made no such motion.

⁶Defendants have apparently confused two separate and distinct motions. Since, however, matters outside the pleadings (i. e., affidavits) have been presented to the court, the motions will be treated as ones for summary judgment pursuant to the directive of Rule 12(b). The court will consider both the pleadings and affidavits and dispose of the case as provided in Rule 56. *Hirsch v. Archer-Daniels Midland Co.*, 258 F. 2d 44 (2d Cir. 1958); *Cook v. Hirschberg*, 258 F. 2d 56 (2d Cir. 1958).

⁷It has, however, been suggested by Judge Kaufman that the 1961-1963 amendments to Rule 56 were designed to overcome the "reluctant" approach to the question of summary judgment set down by these cases. *Dressler v. MV Sandpiper*, 331 F. 2d 130 (2d Cir. 1964).

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⁸As previously stated the powers clause in the Certificate of Incorporation requires all contributions by MRA to be connected with the *purposes* of the corporation or calculated to further its *purpose*. In addition plaintiff alleges that she was induced to make her contribution to MRA by its representation that the money would be applied by MRA toward its *goals and purposes*, as reflected in the Certificate of Incorporation.

⁹UWP's Articles of Incorporation provides that:

"The specific activity in which the corporation is primarily to engage is the organization, coordination and education of individuals and groups with a view toward *developing leadership, responsibility and understanding among individuals, races, classes, cultures and nations.*" (Emphasis added.)

¹⁰Defendant MRA's only reference to the question of standing cites New York Not-For-Profit Corporation Law, Section 1101. This section deals exclusively with the right of the attorney general to bring an action for judicial *dissolution* of a non-profit corporation. It has no relevance to the case at bar.

¹¹In light of the failure of the parties to address themselves to these questions I do not decide these matters at this juncture. Both plaintiff and defendants should have an opportunity to be heard on these vital questions.

Judgment Appealed From.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

Defendant, Up With People Incorporated, having moved the Court for summary judgment dismissing the complaint, and the said motion having come on to be heard before the Honorable Arnold Bauman, United States District Judge, and the Court thereafter on February 25, 1974, having handed down its opinion granting the said motion, and there being no just reason for delay of entry of judgment, it is,

ORDERED, ADJUDGED AND DECREED, that defendant, Up With People Incorporated, have summary judgment against the plaintiff, Annelou Teixeira, Individually and on behalf of all other persons similarly situated, dismissing the complaint.

Dated: New York, N. Y.
February 26, 1974

RAYMOND F. BURGHARDT
Clerk

Notice of Appeal.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

ANNELOU TEIXEIRA, individually and on behalf of all other persons similarly situated,

Plaintiff,

against

MORAL RE-ARMAMENT, Inc., UP WITH PEOPLE INCORPORATED and KIDDER PEABODY AND COMPANY,

Defendants.

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Notice is hereby given that Annelou Teixeira, individually and on behalf of all other persons similarly situated, the Plaintiff above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the order of United States District Judge Arnold Bauman directing that this action is not maintainable as a class action, pursuant to Fed. R. Civ. P. 23, and granting the motion for summary judgment, pursuant to Fed. R. Civ. P. 12(b)(6) and 56, of Defendant Up With People Incorporated entered in this action on February 25, 1974.

Dated: New York, New York
March 6 1974

PARKER, DURYEE, ZUNINO, MALONE & CARTER
By Thomas F. Tivnan
Attorneys for Plaintiff
Office & P. O. Address
1 East 44th Street
New York, New York 10017

Received **ONE (1)** copies of the
within appendit

Dated July 5, 1974

Attorney for Defendant-Appellee
Moral Re-Orientation, Inc

James R. Bayles

Attorney for Defendant-Appellee
Up With People, Incorporated